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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

November 26, 2013
9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

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25

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Summation - Mr. Mastro

1 (Trial resumed)

2 THE COURT: Good morning, everybody.

3 Ready to proceed?

4 MR. MASTRO: Yes.

5 THE COURT: Mr. Mastro, you're up.

6 MR. MASTRO: Thank you.

7 Those are some slides I will be referring to. Not all
8 of them, I promise.

9 Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. MASTRO: Your Honor, today really is judgment day.
12 This long trial is finally over. The parties have presented
13 all of their evidence and now the verdict is in your Honor's
14 hands.

15 On behalf of Chevron, I want to thank your Honor for
16 your consideration and patience throughout this trial, and even
17 your gentle, and sometimes not so gentle, prodding to move us
18 along. And I want to acknowledge my newer adversaries who
19 recently appeared here to try this case. They zealously
20 represented their client and fought hard within the rules which
21 we respect.

22 What has happened in this courtroom over the past six
23 weeks is something Chevron was denied in Ecuador. All parties
24 here have had a full and fair opportunity to make their case,
25 and that reflects the very best of the American justice system

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1 and of its bar. But we have also now seen exposed at this
2 trial the worst of the American bar. Steven Donziger, an
3 American lawyer, who colluded with other American lawyers,
4 American consultants and American funders, to target a
5 deep-pocketed American victim, Chevron.

6 Now, Mr. Donziger admitted on Crude outtakes that he
7 did things in Ecuador "you would never do in the United
8 States," things that were just "out-of-bounds." And he was
9 forced to admit on cross-examination at this trial that he did
10 things "down there that know would not be appropriate here."

11 Because Steven Donziger has shamed our profession. In
12 the guise of practicing law, he has done shocking, stupefying
13 things, that even his own lawyer admitted in opening statements
14 might subject him to ethical charges. But we lawyers don't
15 leave our ethical and legal obligations at the border when we
16 go overseas, and we surely don't abandon them altogether when
17 we come back home.

18 And Steven Donziger, your Honor, has shamed his
19 temple, this courthouse, this sacred place where we litigators
20 practice our profession. He has obstructed justice, lied to
21 court after court, including this one, and showed utter
22 contempt for the rule of law. Because lawyers don't threaten,
23 intimidate and blackmail judges. They don't intentionally
24 deceive and defraud courts. They don't bribe judges and court
25 officers. They don't forge and ghostwrite official court

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1 documents, including the judgment in their own favor. And they
2 don't take the false narrative they have created in a corrupt
3 foreign court and then use it like a club in the U.S. to try to
4 extort billions of dollars out of a well-heeled U.S. victim.
5 Lawyers don't do those things. Criminals do.

6 We have proven at this trial by overwhelming evidence,
7 really beyond any reasonable doubt, even though that is not our
8 burden in this civil case, that the things Steven Donziger and
9 his co-conspirators did in Ecuador, and here in the United
10 States, to try to pressure a U.S. company into paying them off
11 are crimes and cry out for a remedy.

12 Mr. Donziger's defense to this overwhelming evidence
13 reduces to this. While he admits he made errors along the way,
14 inconsequential ones in his view, he claims he did so for a
15 worthy cause, or as his counsel put it in his opening, in the
16 tradition of Thurgood Marshall and other civil rights and human
17 rights lawyers before him.

18 Well, let's get one thing straight. Steven Donziger
19 is no Thurgood Marshall. Indeed, it was Thurgood Marshall who
20 said, in words and substance, "Lawlessness is lawlessness.
21 Neither race nor color nor frustration is an excuse for
22 lawlessness."

23 So, Mr. Donziger, there is no excuse for your
24 lawlessness, and it's time to hold Steven Donziger accountable
25 for the actions he has now been forced largely to admit he

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1 committed.

2 Now, your Honor, while we will go into much greater
3 detail in our post-trial submissions, I want to talk briefly
4 about the claims Chevron has proven at this trial.

5 This is first and foremost a RICO case. This is a
6 U.S. based scheme, hatched and predominantly executed by U.S.
7 lawyers, U.S. consultants and U.S. funders, acting in the U.S.
8 to target a U.S. victim. At the heart and head of this
9 racketeering enterprise is Steven Donziger, a U.S. lawyer right
10 here in Manhattan, who masterminded and orchestrated this
11 scheme, largely put together a team of co-conspirators, and
12 continues to this day to be its driving force. He and his
13 co-conspirators have engaged in a pattern of racketeering that
14 has including repeated acts of mail and wire fraud, extortion,
15 obstruction of justice, witness tampering, and money
16 laundering.

17 Now, Chevron comes here as a private party seeking
18 equitable relief under RICO. In the first instance, we ask
19 this Court to make liability findings that Donziger and his
20 co-conspirators have violated the RICO statute. And then we
21 ask this Court to impose equitable remedies to prevent Donziger
22 and his co-conspirators from profiting even one cent from their
23 crimes. The same kind of equitable remedies that the Seventh
24 Circuit recognized in the *National Organization for Women v.*
25 *Scheidler* case, that Judge Rakoff recognized in the *Motorola v.*

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1 Uzan case, and Professor Blakey, the architect of the RICO
2 statute, has written is available to private parties under
3 RICO.

4 Now, your Honor, Chevron also sues for fraud. For
5 fraud against Burford and Kohn, against U.S. courts, against
6 U.S. federal and state authorities, against foreign enforcement
7 courts, and even against some Ecuadorian courts and
8 authorities, all of whom have been induced to take actions that
9 harm Chevron. And defendants Piaguaje and Camacho are also
10 legally responsible for the frauds Donziger has committed on
11 their behalf. Both because Mr. Donziger is their lawyer, and
12 therefore their agent, and regardless, because they ratified
13 Donziger's actions and those of his Ecuadorian co-counsel, both
14 through their affirmative acts of ratification and their
15 willful blindness to the fraud.

16 Now, at the beginning of this trial, your Honor, I
17 promised you would hear from at least a dozen witnesses who
18 would testify about the ways in which Donziger misled, lied and
19 manipulated them into participating in this scheme. And we
20 delivered on that promise. Your Honor, I want to break it down
21 briefly by category.

22 First, we produced the evidence of the early frauds,
23 the early frauds involving consultants and experts during the
24 judicial inspection process. The frauds of David Russell whose
25 \$6 billion remediation estimate he testified here was SWAG,

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1 scientific wild ass guess. The forgery and faking of
2 Dr. Charles Calmbacher's report, not his signature, not his
3 findings. Donziger induces him to give signature pages where a
4 false report is filed in his name. And the frauds involving
5 Fernando Reyes with whom Steve Donziger cut what he called his
6 bargain with the devil, going over to the dark side, having
7 Reyes pretend to be an independent monitor, when he was no such
8 thing, and he was on Donziger's payroll.

9 Then, your Honor, we proved the more audacious fraud
10 scheme. When the case wasn't coming together, when the experts
11 were telling him it wasn't coming together, Steve Donziger got
12 bolder. He engineered the Cabrera fraud, the appointment of a
13 single global damages expert, whose process would be hijacked,
14 who would be bribed, and whose product would be ghostwritten by
15 Donziger's team and the folks at Stratus Consulting, Doug
16 Beltman, Ann Maest, and Josh Lipton.

17 In fact, your Honor heard the testimony of Josh
18 Lipton, that when he came to realize what his own team had
19 done, he as the head of Stratus was so shocked and surprised
20 that he severed his relationship with Beltman and Maest. And
21 that when he was told that only 5 percent of the Cabrera report
22 was ghostwritten by Stratus, and learned when in fact the
23 entire executive summary had been, he severed his ties with
24 Doug Beltman because that was a lie.

25 THE COURT: Did you say only 5 percent of the Cabrera

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1 report was written by Stratus?

2 MR. MASTRO: That's what he was told by Doug Beltman
3 and Josh Lipton considered that to be a lot.

4 Your Honor, then we have the cover-up. Because when
5 the truth was to be revealed, Steve Donziger covered up with
6 his own co-counsel. You heard from Jeff Shinder and John
7 McDermott by deposition. You heard from deposition testimony
8 of Stratus's counsel that Donziger pressured them to obstruct
9 the Stratus discovery from going forward and to slow it down.
10 These witnesses testified that they were appalled by what they
11 learned that Stratus had ghostwritten the Cabrera report. And
12 when they learned that, Mr. Shinder and Mr. McDermott felt
13 ethically obligated to withdraw from the case.

14 And your Honor heard from Mark Quarles, another
15 consultant who worked for Donziger, that Donziger had him put
16 in an affidavit to courts saying that Cabrera was independent,
17 and if he had known the truth, he never would have done that.

18 And you heard even from his former employees, like
19 Andrew Woods, that they didn't know the truth about Stratus
20 ghostwriting the Cabrera report and were shocked to learn that
21 truth that had been kept from them by Mr. Donziger.

22 Finally your Honor heard from the former funders, the
23 lifeline to keep this scheme going, who Donziger defrauded with
24 lies about the Cabrera collaboration. And Joe Kohn told you
25 that and Chris Bogart of Burford told you that, and that they

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1 never would have continued to fund, or fund it at all, had they
2 known the truth.

3 Now, your Honor, we also proved other schemes
4 important to this racketeering enterprise. We proved a
5 pressure campaign by Steve Donziger, orchestrated by Steve
6 Donziger, largely through his own words, writings, and those of
7 his collaborators. It had three components, your Honor.

8 One, pressure, intimidation, threats, to control the
9 court in Ecuador in collusion with the Correa government.

10 Two, then taking their fraudulent judgment on a
11 foreign enforcement campaign to try and disrupt Chevron's
12 operations around the world.

13 And, three, and perhaps just as shocking, the scheme
14 here in the United States, the pressure campaign in the United
15 States, to take the false narrative that Steve Donziger and his
16 co-conspirators created in Ecuador, and then use it like a club
17 here in the United States.

18 Your Honor, don't take my word for it. Steve Donziger
19 and his associates' words. They themselves called it their
20 Chevron pressure campaign.

21 And, your Honor, their own words, Chevron pressure
22 chart, created by Donziger's associate Woods. And literally it
23 is Chevron being the center of the universe, and every circle,
24 every circle, a U.S. target of the pressure campaign. It was
25 that orchestrated, that intricate a campaign.

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1 And who did they target with their false narrative,
2 their fraud, from Ecuador? They targeted Congress, where
3 Donziger went up and lied to Congress. New York State Attorney
4 General Andrew Cuomo, who Donziger and his cronies got to make
5 an inquiry of Chevron that it had to respond to. The SEC,
6 through Amazon Watch, Chevron had to respond to that. New York
7 State Comptroller Thomas DiNapoli, a shareholder as the
8 overseer of the pension fund, that Donziger and his cronies got
9 to insist that Chevron in public pronouncements settle, even
10 when the truth was coming out here in this courtroom about the
11 fraud.

12 Your Honor, what were the big lies that Donziger and
13 his surrogates told over and over again to those authorities?
14 The \$6 billion remediation damages estimate. This record, 22
15 times after David Russell said cease and desist, Steve Donziger
16 and his cronies were still using a \$6 billion remediation
17 estimate that Russell said wrong, no longer valid, off by an
18 order of magnitude of ten or more, but they kept using it over
19 and over again with the SEC and everywhere they could and in
20 every one of their press releases.

21 Another one of Donziger's favorites. He even got
22 President Correa to start saying it, that what happened in
23 Ecuador was 30 times worse than the Exxon Valdez. In this
24 record, over 12 times, even after his own expert, Mr. Powers,
25 told him that was just flat-out wrong, Donziger and his cronies

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1 kept using that false claim.

2 Your Honor, of course, Steve Donziger's favorite lie.
3 Cabrera was independent. Cabrera gave the best independent
4 estimate of billions in damages. A lie. In this record, he
5 told to authorities and in a press releases 28 times after
6 Steve Donziger and his team met secretly with Cabrera before he
7 even had been appointed by the court.

8 Now, your Honor, I will not have time today to go
9 through all of the evidence, but there is one part of our case
10 that I must focus on and do a deep dive, and that is the
11 judgment fraud.

12 Your Honor, it's so important because at the beginning
13 of this case, Mr. Friedman told you this case comes down to
14 Guerra versus Zambrano and whether there was a bribe. And we
15 told you the evidence will show, without question, that
16 Donziger's team ghostwrote the judgment in their own favor.
17 Guerra tells us why. And when you see Guerra, and when you see
18 Zambrano, you will know who is telling the truth about the
19 bribe. But one thing has always been certain. This judgment
20 was ghostwritten by these plaintiffs, and we proved it in this
21 case.

22 Let's show you the evidence. Because, your Honor, we
23 produced example after example after example of the internal
24 files of Steve Donziger and the plaintiffs' team showing up
25 word for word the Fusion memo, 150 word strings over and over

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1 and over again in the judgment. That is a draft memo that ends
2 in the middle of a sentence showing up in 150 word strings word
3 for word in the judgment.

4 We proved, your Honor, through our experts, not only
5 the ghostwriting of the judgment, but also that it is nowhere
6 in that court record.

7 And, your Honor, We proved it through the errors that
8 show up in the judgment, the errors in the Fusion memo that
9 show up word for word in the judgment, including number
10 sequencing that are out of sequence, yet they show up word for
11 word in the judgment, and even places where citations are
12 missing. So in Spanish are the notations. To fill in the
13 citation in the memo, the judgment shows up with fill in the
14 citation as well. That's how ham-handed, that's how obvious,
15 that's how it's like fingerprints from the internal work
16 product on the judgment itself.

17 It's not just the Fusion memo though, your Honor.
18 It's also the Selva Viva database. That's their internal
19 database. There is nowhere in this court record that SV, Selva
20 Viva, is anywhere on the data compilations. There is nowhere
21 where the SV or the TX for Texaco shows up in any of the data
22 compilations that are actually in the court record. Yet they
23 show up more than 70 times in the judgment, including your
24 Honor, with errors, the fingerprints again. Errors like in
25 their own Selva Viva database, they report mercury findings,

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1 and they don't accurately report whether they are negative or
2 positive.

3 So when they transfer that data into the judgment,
4 that they ghostwrote themselves, they report mercury levels
5 that are problematic. In fact, the real data was that there
6 were no mercury findings. It's the errors, the fingerprints
7 that show up in their own internal product in the judgment
8 itself.

9 Your Honor, of course there is the Fajardo trust
10 e-mail. Now, no lawyer would ever submit to a court an
11 internal e-mail purporting to analyze a case and quote from the
12 case and talk to his team about it. This is really
13 significant, your Honor, because there is no discussion in
14 their complaint or in the record about setting up a trust, but
15 this became critically important to the scheme, as your Honor
16 heard in this case, because they decided they needed to set up
17 a trust offshore in Gibraltar so they can divvy up the money
18 outside the reach of Ecuadorian authorities.

19 THE COURT: Mr. Mastro, the reason for that, according
20 to the evidence, is what?

21 MR. MASTRO: The reason for that, your Honor, is that
22 they wanted to be outside the reach of Ecuadorian authorities
23 so that the funders and the lawyers could divide up the money
24 in the first instance and make sure that they got their piece.
25 That's why they wanted to be offshore. And if there were any

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1 issues, they did not want to be subject to the same corrupt
2 legal system that they corrupted to get their judgment in the
3 first place.

4 THE COURT: Does it have to do in your submission with
5 any provision of the Ecuadorian statute under which they sue?

6 MR. MASTRO: Well, your Honor, it does because that
7 statute speaks of his rights and how things have to be handled,
8 and they wanted to be outside the scope of that statute when
9 they actually divided up the money.

10 THE COURT: Does it or does it not provide that
11 attorneys' fees will be up to one-tenth of one percent?

12 MR. MASTRO: Correct. And they wanted to get
13 ultimately up to 30 percent out of the judgment. They said 20
14 percent, and you will see later in the summation I will come to
15 where they upped the percentages to 30 percent.

16 Now, your Honor, the key here on the trust e-mail,
17 again, Fajardo quotes the leading case on trusts, but he
18 misquotes it, and word for word the misquote shows up in the
19 judgment. The real quote from the case at the bottom of the
20 page, you can see how the words are different. Again, it's the
21 errors. And Fajardo miscites a case when he says it is about
22 trusts where it has nothing to do with trusts. And guess what?
23 In the judgment itself, the misquote from the leading trust
24 case, the same wrong citation to another case. Your Honor,
25 this is like not only fingerprints, this is all ten fingers,

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1 both palms.

2 Now, your Honor, what is their explanation for this
3 overwhelming evidence? What is it? Steve Donziger? He has
4 nothing to say about this. He admitted at his deposition he
5 has no idea how their internal work product got into the
6 judgment. That's his testimony. Yet here he tried to slough
7 it off by saying, I can offer explanations, and then offered
8 none.

9 So who did they produce here to try to create some
10 cover for this? Mr. Ponce came here. What did Mr. Ponce say?
11 Mr. Ponce said, at the judicial inspections there were
12 documents sometimes handed up to the court. Well, there are
13 two problems with that, your Honor, because Mr. Ponce also said
14 the actas were basically a transcription or record of
15 everything that happened at those judicial inspections. It was
16 kept word for word and the parties agreed to it. Yet nowhere
17 in those transcripts is there any reference to any of these
18 documents being handed up to the court. And Mr. Ponce
19 testified that he was largely out of the case by July 2007.
20 But the documents we are talking about are all post July 2007.
21 So Mr. Ponce's testimony not only undermines the notion that
22 these could have gotten to the court through some means, he
23 wasn't even there.

24 What is their other explanation? This one I love.
25 Nicolas Zambrano. The documents at the doorstep. Oh, the

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1 parties would just leave me documents at the doorstep. It's a
2 ludicrous story, your Honor. But when we dug down on Nicolas
3 Zambrano's testimony, he couldn't recall any of the documents.
4 He says that when they would be left there, he would match them
5 to the record, and that if they didn't match, he would discard
6 them. And, your Honor, about the critically important Selva
7 Viva database that shows up over 70 times in the judgment, Mr.
8 Zambrano admitted he never got a computer disk, he doesn't even
9 know what an Excel spreadsheet is, and it would have been
10 improper under Ecuadorian law to have considered a database
11 outside the record. End of story. No explanation. No
12 defense. No expert came in here on their behalf to contest one
13 whit that their internal work product shows up word for word in
14 that judgment because they wrote it themselves.

15 Now, your Honor, let's come to Guerra versus Zambrano,
16 because Alberto Guerra came into this courtroom. He admitted
17 his crimes. He took forthrightly responsibility for his
18 actions. We didn't pick him. Steve Donziger and his cohorts
19 picked him. And when he came in here, the reason we know he
20 told the truth is because he is corroborated by hard evidence
21 in every particular. Let's go through it.

22 Guerra served as Zambrano's ghostwriter. How do we
23 know that? Zambrano himself admitted that Guerra served as his
24 ghostwriter. How else do we know it? And I have to say, that
25 admission came only because Mr. Gomez warned Mr. Zambrano just

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1 before his deposition that his orders show up in draft form,
2 many, many, many of them, on Guerra's computer. That's how
3 that admission occurs.

4 Second, your Honor, we know from Guerra's computer,
5 over 100 Zambrano draft orders on Guerra's computer. Sometimes
6 99 percent matches what was ultimately issued under Zambrano's
7 signature. Proof positive Guerra is telling the truth.

8 Next, Guerra says Zambrano paid Guerra to be his
9 ghostwriter. What is the proof? Zambrano directly deposited
10 into Guerra's account on one occasion. Guerra's day planners,
11 his diary, his daily activities, they document time and time
12 again Guerra meeting with Zambrano, Guerra receiving money from
13 Nicolas, Guerra working on Zambrano cases, time and time again.

14 Your Honor, just one example, February 24, 2012,
15 that's days before Nicolas Zambrano is removed from office in
16 disgrace. Guerra's day planner, Nicolas gives him \$2,000. And
17 what happens that same day? Guerra deposits the \$2,000 into
18 his bank account.

19 Guerra also testified that he and Zambrano shipped
20 ghostwritten materials to each other. Hard evidence
21 corroboration. The TAME shipping records, back and forth,
22 Guerra to Zambrano, Guerra to others in the courthouse, back to
23 him. And Zambrano admitted that they shipped case related
24 materials to each other.

25 Guerra served as Zambrano's ghostwriter on the Chevron

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1 case. How do we know it? The hard evidence. Nine separate
2 opinions in the Chevron case in draft on Guerra's computer.

3 How else do we know it? What better evidence is there
4 that Guerra was helping Donziger and his team than the
5 September 5, 2010 e-mail, "I will support the matter of Pablo
6 Fajardo so it will come out soon and well," as Zambrano was
7 about to resume his role presiding on the case and the judgment
8 day was near.

9 THE COURT: But the date of this e-mail, how does that
10 relate to the time period in which Guerra testified there was
11 the meeting with Fajardo, Donziger and Yanza, followed by the
12 phone call related to him by Zambrano from Fajardo saying, in
13 substance, the fix was in?

14 MR. MASTRO: Your Honor, this is close in time.

15 THE COURT: It's earlier, isn't it?

16 MR. MASTRO: Yes, your Honor, it is earlier. It's
17 earlier, but I am going to come to the meeting that happens
18 late 2010. But this is the precursor to let you know Donziger
19 knew Guerra is communicating to him that, I am there to help
20 you to see that the matter of Pablo Fajardo, the only matter
21 being the Lago Agrio case, will come out well.

22 Your Honor, the LAPs' legal team paid Guerra to
23 ghostwrite orders. How do we know that? We know it because of
24 the direct deposits by a Selva Viva employee, Ximena Centeno,
25 into Guerra's account on at least two occasions, a thousand

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1 dollars each time. You can see her signature on her national
2 ID card. You can see her signature on the deposit slips.

3 THE COURT: The national ID card, that's in the
4 record?

5 MR. MASTRO: Yes, your Honor.

6 It's also the case that it's her national ID number on
7 one of the deposit slips. And, of course, Mr. Donziger had to
8 admit that Centeno worked for Selva Viva, an organization that
9 he was president of. And, your Honor, when you look at the
10 pattern of deposits, withdrawals from Selva Viva's account,
11 deposits into Guerra's account, it's shocking how often,
12 exactly what Guerra said, it occurs. Month after month you
13 have got a thousand dollars a month from the LAPs' team.

14 Finally, we come to the bribery of Zambrano to
15 ghostwrite the judgment. How do we know that's true? We know
16 because Guerra's account is corroborated by both Chevron
17 attorneys at the time and even Mr. Donziger's testimony about
18 the initial solicitation. Guerra approaches the Chevron team,
19 which says, no, with the bribe in exchange for ghostwriting the
20 judgment in your favor.

21 Guerra then on behalf of Zambrano goes to Fajardo and
22 then Donziger. Donziger admits that that overture was made,
23 and we are going to come back to, your Honor, the ramifications
24 of admitting too much by Steve Donziger, but it corroborates
25 Guerra's attempt. How do we know the ghostwriting that

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1 occurred, as Guerra says, because Zambrano asked him to please
2 take a look at what Donziger's team had ghostwritten? We know
3 because he said, I have got a memory aid from Fajardo that
4 helped me understand the procedural history. He swore to that
5 even before he could find the memory aid. And it was only
6 after they had attacked him to say there was no corroboration
7 and subpoenaed him that he goes back in his files and finds
8 that memory aid, and that memory aid clearly is from Fajardo
9 and company because it talks about the judges admonishing the
10 attorneys and my opposing party and names one of them, Patricio
11 Campuzano, a Chevron attorney on the Lago Agrio case.

12 Finally, we know it happened the way Guerra said
13 because all their internal work product shows up in the
14 judgment word for word in eight separate respects. Imagine how
15 many more respects we could have proven if they actually
16 produced the documents in Ecuador that they filed a collusive
17 action to try and avoid doing. Your Honor, Guerra is
18 corroborated in every particular.

19 How about Nicolas Zambrano, who we gave a warm New
20 York welcome to? No corroboration in any respect of his story.
21 But impeachment galore. Zambrano claims he did not pay Guerra
22 to ghostwrite his orders. Let's start with that one.

23 He admits that Guerra wrote them. He admits Guerra
24 was in financial distress. He admits he gave him a single \$300
25 loan. But then says, I didn't give him anything else.

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1 Well, your Honor, the one thing I can say is Alberto
2 Guerra didn't work for free. And Nicolas Zambrano is lying.
3 And Nicolas Zambrano was warned again by Mr. Gomez just before
4 his deposition about the \$300 deposit. So he had to admit
5 that. But he couldn't admit that he was paying somebody else
6 to ghostwrite his orders. Blatantly illegal under Ecuadorian
7 law. So he admitted too much, and he lied way too much.

8 Now, your Honor, it's also the case that Zambrano gave
9 a sworn statement to the other side. Zambrano gave a statement
10 to prosecutors. He never mentioned any payments to Guerra,
11 loan or otherwise. He never mentioned Guerra drafting orders
12 in Zambrano's cases, but he had to admit those things after Mr.
13 Gomez warned him.

14 Zambrano lie number two. He claims he is the only
15 author of the judgment. Your Honor, he has no supporting
16 documents to show he wrote the judgment. He tells the
17 ludicrous story of, oh, I kept careful notes and collected a
18 lot of documents, but I discarded all of them a year later. In
19 the midst of a heated appeal, in the midst of our RICO action
20 here, when everyone in the world knew that there was a fraud
21 allegation and an allegation of ghostwriting of that judgment,
22 Nicolas Zambrano conveniently says, I threw away all of my
23 notes.

24 Your Honor, he admits he saw Chevron's appellate
25 briefs. He knew that that allegation was out there, that that

DBQ8CHE1

Summation - Mr. Mastro

1 judgment had been ghostwritten, but yet he makes the ludicrous
2 claim he threw away his notes. There were no notes.

3 Could Nicolas Zambrano have been the author of this
4 opinion? He didn't even know what TPH was. My teenage
5 daughter knows what TPH is.

6 THE COURT: I'm so sorry.

7 MR. MASTRO: And I say to your Honor there is more of
8 a chance my teenage daughter wrote the 188 page Ecuadorian
9 opinion than Nicolas Zambrano did. He didn't know what the
10 most carcinogenic agent was in the judgment, what the
11 statistical data of highest importance was in the judgment,
12 what the theory of causation was in the judgment. He couldn't
13 explain how the English word workover appears twice in the
14 judgment that comes out of the Fusion memo, your Honor, when he
15 doesn't speak English and he had no idea what it meant or how
16 it got there.

17 Your Honor, he really gave testimony ludicrous in the
18 annals of courtroom history. Certainly in my experience, that
19 man did not write this judgment.

20 Here is the most ludicrous piece of his story. That
21 he orally dictated the 188 page, single-spaced judgment to Ms.
22 Calva, the 18-year-old typist and Internet researcher
23 extraordinaire, and he never provided her any written materials
24 at all to do that. He dictated every word.

25 Well, let's dig a little deeper on that. He gave a

DBQ8CHE1

Summation - Mr. Mastro

1 sworn statement in this case. He gave a statement to
2 prosecutors. What he told this Court in his sworn statement
3 was, I did not receive support or assistance from any other
4 person. What he told the prosecutors last September was, I
5 have not had any help from any person. Magically, by the time
6 we get here, Ms. Calva has materialized, although she never
7 came here.

8 Now, your Honor, it is just ludicrous to think that
9 Mr. Zambrano dictated number sequences that show up out of
10 order from the Fusion memo to Ms. Calva in exactly the same out
11 of sequence number. The true explanation is it was
12 ghostwritten by the plaintiffs and they just lift it from their
13 own work. But you don't dictate out of number sequence from
14 internal work product of the plaintiffs and then it shows up
15 word for word in the judgment in exactly the wrong number
16 order. It doesn't happen. And you don't dictate, your Honor,
17 complex equations and test data sequences with dashes and
18 underlines and capitalizations and weird acronyms. It would
19 have taken months and months and months to try to dictate such
20 a thing. It would never have happened.

21 Of course, as you know from yesterday's testimony from
22 Mr. Lynch, 30 percent of the judgment is quotes from other
23 sources. Yet he says he dictated every word to Ms. Calva. And
24 of course he says, she, who apparently also couldn't speak any
25 other language but Spanish, did all of his Internet research,

DBQ8CHE1

Summation - Mr. Mastro

1 finding all those U.S. and English and Australian and French
2 authorities that Judge Zambrano claims he then put into the
3 judgment. It's ludicrous testimony, your Honor.

4 Now, here is where Judge Zambrano really got caught
5 and where Mr. Donziger and his cronies really got caught.
6 Zambrano claims the judgment was written entirely on his new
7 computer.

8 Your Honor, he says he only worked on the new
9 computer. What did Tarco say? A draft of something similar to
10 the judgment was found on the old computer. What does Tarco
11 also say? The delivery date. He claims the providencias was
12 created October 2010. We proved to your Honor that that new
13 computer never even got to the Quito courthouse until as early
14 as November 26, 2010.

15 A ludicrous story, an impossible story. Zambrano is
16 lying.

17 Then the Republic of Ecuador puts up a phony Tarco
18 declaration, and of course Mr. Tarco didn't show up here.

19 Finally, your Honor, Zambrano -- two more things, your
20 Honor. Zambrano claims he read the entire record. He could
21 not possibly have done that. He had two four-month tenures on
22 the case. A 236,000 page record. He admits he has to read the
23 entire record. He says there were a lot of copies, which means
24 you had to read them to see that they were copies. And your
25 Honor, this is a man who claimed in January to a Reuters

DBQ8CHE1

Summation - Mr. Mastro

1 reporter that he still had 50,000 pages to go. He got caught
2 with that testimony because an expert testified it would have
3 been humanly impossible for him from late January to
4 mid-February to have read 50,000 pages and written the
5 judgment.

6 So he has to tell a lie here. He has to tell a
7 ludicrous lie that he made that up with the Reuters reporter
8 because he was being harassed by reporters. Ludicrous because
9 he invites the Reuters reporter in to take photographs, with
10 all these stacks of paper in his office, to talk about how hard
11 he is working on the judgment. And then what happened between
12 the end of January and February 14? A RICO case gets filed
13 here in New York. And a TRO gets entered here in New York.
14 And they have to rush out their ghostwritten judgment, with all
15 their errors from their internal work product still in there,
16 they didn't have a chance to scrub it, because they were trying
17 to get ahead of this court, and Zambrano is caught in his own
18 tangled web of lies in what he told to the Reuters reporter.

19 Finally, your Honor, Mr. Zambrano claims that there
20 was no influence from the Correa admission. He claims he
21 didn't even know that President Correa supported the LAPs
22 before Zambrano had signed that judgment. He apparently is the
23 only person in Ecuador who didn't realize that President Correa
24 supported the LAPs, even ran for office on a platform of
25 supporting the LAPs. But, your Honor, Zambrano admits that he

DBQ8CHE1

Summation - Mr. Mastro

1 had read Chevron's alegato, which on more than a dozen
2 occasions talks about Correa's support for the plaintiffs and
3 how that is distorting the process.

4 And the Republic of Ecuador has come through with
5 Zambrano big time. Because this is a man who left office in
6 disgrace, removed from office in February 2012. He is out of
7 work for over a year. But then, at the end of March, he signs
8 a declaration for Donziger's team, Donziger's team working with
9 the Republic of Ecuador, with President Correa's public
10 support. What happens within a month? Zambrano gets a new
11 job. And it's the job of a lifetime, because he is being paid
12 \$46,000 a year as a community relation specialist. It's not
13 clear what he is doing there. He doesn't realize he even has
14 an e-mail account. He has never even seen their Web site. He
15 can't even say how much of the company Petroecuador owns, even
16 though by law Petroecuador must own the majority share. And
17 that's more than he ever made as a judge. A judge, whose
18 office he disgraced, was removed from office for misconduct.

19 Your Honor, Nicolas Zambrano is getting paid more than
20 twice what the position calls for, and this is right off the
21 Web site of this public company. They show you the position,
22 and the pay for the position, and then when what Zambrano's
23 contract is. It's 1800 a month for the position, but somehow
24 Nicolas Zambrano is getting \$46,000 a year. The Republic of
25 Ecuador pays him off for the favor he is doing for the

DBQ8CHE1

Summation - Mr. Mastro

1 plaintiffs in this case.

2 Now, your Honor, enough said about Guerra versus
3 Zambrano because only one of them was telling the truth in this
4 courtroom, and it was Alberto Guerra, and he is backed up in
5 every particular.

6 Your Honor, I want to come next to the defense case.
7 The defense case is more significant for who wasn't here than
8 who was here.

9 We didn't hear from Pablo Fajardo. We didn't hear
10 from Julio Prieto, or Juan Pablo Saenz, or Luis Yanza, or
11 Ximena Centeno, who works for Selva Viva, or Atossa Soltani,
12 who they said couldn't be here, but she was in this courtroom
13 one day watching the proceedings, but she didn't get up on that
14 stand. We didn't hear from Jim Tyrrell, the man behind the
15 curtain. We didn't hear from Aaron Marr Page, up to his
16 eyeballs in Donziger's schemes. He sat in this courtroom every
17 day and never got on that stand. We didn't even hear from the
18 extraordinary Ms. Calva. And we certainly didn't hear from
19 Mr. Tarco.

20 Your Honor, it's the missing evidence, the evidence
21 had it supported their case we would seen in a heartbeat, but
22 they have kept from this Court and from Chevron. No
23 explanation for the code names, the secret bank accounts, the
24 e-mail accounts. No explanation for the contemporaneous lies
25 about Cabrera's independence for the cover-up. No explanation

DBQ8CHE1

Summation - Mr. Mastro

1 for how their internal work product ended up in the judgment.
2 No explanation for why one of Selva Viva's employees is making
3 deposits directly into Guerra's account. No explanation for
4 misleading public officials in the media. And no Ecuadorian
5 documents produced in response to Chevron's demands, only the
6 belated filing of a collusive action in Ecuador to try and give
7 them cover for their contempt of this Court's orders, even
8 though Humberto Piaguaje yesterday testified to this Court that
9 there is a room full of documents at Selva Viva headquarters.
10 His words, "Too many to count." Imagine what a treasure-trove
11 they would be if we had them here. Adverse inferences are more
12 than appropriate on every major issue in this case.

13 Your Honor, let's talk about the witnesses who were
14 called. We talked about Nicolas Zambrano. Enough said about
15 him. The other witnesses they called, they ended up only
16 calling six witnesses during their case. They were largely
17 irrelevant, offered inadmissible testimony. In fact, they made
18 many damning admissions while they were on cross-examination.
19 But at the end of the day, the one witness they offered, who
20 had to explain himself, who took that stand, was Steven
21 Donziger. And when Steven Donziger took that stand, your
22 Honor, he told lies, big and small.

23 That's what criminals do. They get trapped in their
24 own lies. Lies as small as a \$443 breakfast with Pablo
25 Fajardo, which he claimed was a press junket in Ecuador, and

DBQ8CHE1

Summation - Mr. Mastro

1 never even was there. And big lies, your Honor, and I am going
2 to go through those big lies now. Because Mr. Donziger has a
3 philosophy about lying. We know from his own internal
4 documents. His philosophy. If you repeat a lie a thousand
5 times, it becomes the truth. He even trained himself to lie
6 through evasive answers when he was preparing for his
7 deposition, writing to himself to give answers like, "it's
8 possible, but I don't think so." "I guess it's possible, but
9 to the best of my recollection, I didn't."

10 Then he gave them, those kind of evasive answers, over
11 and over and over again. And, your Honor, he gave evasive
12 answers to my cross-examination questions, along the lines that
13 he trained himself to give, more than 100 times. How many
14 times did he give evasive answers to his own attorney on
15 redirect? Zero.

16 Now, your Honor, we are going to talk about some of
17 Mr. Donziger's big lies when he was up there on that stand.
18 One of the biggest whoppers of all is his role vis-a-vis Mr.
19 Fajardo. Because Mr. Donziger is a control freak. He has been
20 in control. He remains in control. But he had the audacity to
21 get up, the temerity to get up on that stand and say that the
22 lead lawyer in the Ecuador case from 2005 until the present has
23 been Pablo Fajardo and that Donziger serves at his pleasure.

24 Well, your Honor, the truth is told in Donziger's own
25 book proposal where he says, "I am the lead lawyer in the class

DBQ8CHE1

Summation - Mr. Mastro

1 action trial." The truth is told in Donziger's engagement
2 agreement with the LAPs; he is appointed to coordinate the
3 overall legal strategy of the plaintiffs. The truth is told in
4 Donziger's own e-mail in 2009 to Joseph Kohn that my firm's
5 primary obligation is to run the case on a day-to-day basis.
6 The truth is told, your Honor, in Donziger's own notebook
7 entries. Presumably, he was telling himself the truth when he
8 was writing to himself in his own notebook, Pablo still
9 introduces me as the cabeza of the lawsuit, the head in
10 Spanish.

11 (Continued on next page)

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DBQLCHE2

Summation - Mr. Mastro

1 MR. MASTRO: And supervising the legal work is a
2 full-time job.

3 THE COURT: When he said that, didn't he go on and
4 write that he doesn't like that?

5 MR. MASTRO: He did, your Honor, because he's trying
6 to cover in Ecuador that he's not the big gringo who shows up
7 all the time. But this is a man who in every respect has been
8 manic about controlling every detail of public disclosure, of
9 hiding the Stratus involvement, of controlling the people in
10 Ecuador by writing things like -- excuse me, not my words, your
11 Honor -- don't fuck it up, do this. You've seen the emails,
12 your Honor.

13 And the truth is told, your Honor -- next slide,
14 please -- in the fact that Pablo Fajardo didn't even graduate
15 from law school until 2004, and it wasn't until December 2005
16 that at Donziger's insistence he became for the first time,
17 Fajardo, joint counsel of record because Donziger was upset
18 with lead local counsel Alberto Wray.

19 And the truth, your Honor, is told in the money. It's
20 all about the money. Steve Donziger makes 6 percent times more
21 in salary than Pablo Fajardo, and on a contingency basis stands
22 to make more than three times more than Pablo Fajardo. In any
23 universe I've ever been in, the guy who makes more money is
24 usually the boss and this world ain't no different that Steve
25 Donziger is in.

DBQLCHE2

Summation - Mr. Mastro

1 Your Honor, let's talk about more of Mr. Donziger's
2 lies. Your Honor, let's talk about Donziger's lies about the
3 legality of the LAP team's collusion with Cabrera because he
4 came into this court and he had the temerity to say in this
5 case that although he's been confused in the past, he now
6 believes the process used to create the executive summary of
7 the Cabrera report was fundamentally consistent with Ecuadorian
8 law and he never understood that any actions taken were
9 impermissible. That's what he swore to on the witness stand
10 here.

11 The ghostwriter of the Cabrera report not revealing it
12 to the court and then having the same ghostwriting party,
13 Stratus, write the comments criticizing their own ghostwritten
14 product and then ghostwriting for Cabrera the response where
15 the damage estimates get jacked up. I don't know what country
16 that would be permissible in, but it certainly wasn't
17 permissible in Ecuador and Donziger knew it at the time because
18 when the truth was about to come out in April 2010, he crafted
19 something to send to his cocounsel. No evidence he actually
20 sent it, your Honor.

21 And what he admitted to himself when he did that was
22 that, quote, the traditional Ecuadorian law perspective would
23 hold that the level of collaboration between one party and the
24 expert is problematic and improper in that all court-appointed
25 experts in Ecuador should be independent and that Cabrera

DBQLCHE2

Summation - Mr. Mastro

1 violated his duties to the court and treating him like a U.S.
2 style expert, as we did, will be seen as a violation of local
3 court rules.

4 Now, your Honor, it goes to his state of mind at the
5 time, at the time Cabrera was being appointed, at the time
6 Cabrera was doing his work, and at the time it was going to
7 come out, the truth about the LAPs' team's collusion with
8 Cabrera, how they tried to cover it up. And, your Honor, it's
9 that guilty state of mind about Cabrera that gives Donziger
10 away.

11 If he didn't have a guilty state of mind, if he didn't
12 realize it was wrong, why did he use code names like Wao, cook,
13 waiter, restaurant?

14 Why did he tell the Crude cameraman to go off the
15 record when one of his own U.S. experts told him it was bizarre
16 to meet with Cabrera before he was even appointed?

17 Why did Donziger use secret bank accounts to make
18 undisclosed payments to Cabrera outside the court process?

19 Why did Donziger use secret password protected email
20 accounts like lagarto3 and gringograndote?

21 Why did Donziger make secret plans to install one of
22 his lawyer's girlfriends as Cabrera's assistant to keep him
23 "under control"?

24 Why did Donziger enter into a secret contract with
25 Cabrera which defendants never produced?

DBQLCHE2

Summation - Mr. Mastro

1 Why did Cabrera and Fajardo mislead the Ecuadorian
2 court by denying any relation or agreement?

3 Why did Donziger and his team conceal Stratus's
4 involvement?

5 Why did the Cabrera report fail to identify Stratus's
6 role?

7 Why did Donziger mislead the own members of his team:
8 Hinton, Woods, Garr?

9 Why did Donziger tell his team to keep all
10 communications highly confidential about Cabrera?

11 Why did they pay Crude filmmakers to edit out a scene?

12 Why did Donziger and his team obstruct discovery of
13 Stratus's role from coming out in the 1782s?

14 Why did Donziger and his team submit a misleading
15 Fajardo declaration to 17 U.S. courts?

16 Why did Donziger and his team implement the cleansing
17 strategy?

18 And why did Donziger and his team stonewall production
19 of Ecuadorian documents and file a collusive lawsuit to try to
20 prevent disclosure if he didn't know that what he'd done was
21 wrong?

22 And, your Honor, the surest proof that Steve Donziger
23 knew that under Ecuadorian law it was illegal what his team had
24 done is -- go to the next slide -- the email he got from Julio
25 Prieto on March 30, 2010, taken apparently from Donziger, that

DBQLCHE2

Summation - Mr. Mastro

1 it's normal in the U.S. to do what they did with Cabrera. But
2 the problem, my friend, is that "the effects are potentially
3 devastating in Ecuador. Apart from destroying the proceeding,
4 all of us, your attorneys, might go to jail."

5 Your Honor, this is a signed confession. How could he
6 have said with a straight face that he thought this was fine,
7 that he never thought it was impermissible in Ecuador, that he
8 relied on local counsel. And what did local counsel tell him?
9 We might all go to jail. End of story.

10 Now, your Honor, Steve Donziger told big lies about --

11 THE COURT: Before you leave that point.

12 MR. MASTRO: Certainly, your Honor.

13 THE COURT: He was asked about this memorandum, if I
14 remember correctly, either in an early deposition, maybe the
15 deposition in this case, or at the sanctions hearing or both.
16 And what did he say about it?

17 MR. MASTRO: Well, your Honor, I'm glad you asked
18 because he has implied now, piggybacking off their contrived
19 collusive lawsuit, that this, this is a reference to them
20 fearing that disclosure of client confidences would cause them
21 jeopardy. Your Honor, there's no reference here to client
22 confidences. The documents they're talking about being
23 disclosed are documents of a U.S. party in the U.S., Stratus.
24 It couldn't possibly have meant that. And there's no reference
25 to this.

DBQLCHE2

Summation - Mr. Mastro

1 And as your Honor knows, the first time in this case
2 ever they brought up the notion of some Ecuadorian law
3 prohibition on sharing client confidences without the
4 permission of all clients was after they had gotten their
5 collusive lawsuit together. Indeed, as late as December 2012,
6 we were in this courtroom arguing those issues and Mr. Veselka
7 was here then on behalf of the LAPs and never made such an
8 argument and they never made such an argument before that. And
9 it has no application to this email whatsoever which Ecuadorian
10 law would have no application to what Stratus, a U.S. party,
11 had to produce pursuant to a U.S. order in the U.S.

12 THE COURT: But didn't he at some other time give an
13 entirely different explanation of what this meant? Not the
14 client confidence explanation, but a different one?

15 MR. MASTRO: Your Honor, I'm not, I'm not recalling
16 it. Excuse me one second.

17 Your Honor, it speaks to, in the dear fellow counsel
18 letter, they are scared there's an admission there -- this is
19 the April 2010 letter Mr. Donziger wrote -- they're concerned
20 they all might go to jail because of the underlying fraud and
21 that Chevron would refer this to prosecutors. I don't think
22 that mitigates one whit what this means. What this means is
23 Mr. Donziger realized his own local counsel thought under
24 Ecuadorian law they could go to jail for what they did with
25 Cabrera.

DBQLCHE2

Summation - Mr. Mastro

1 Now, your Honor, if I may briefly talk about the
2 contacts with Guerra. Mr. Donziger told many lies about
3 Mr. Guerra. They had a relationship. Guerra would email him.
4 From 2008 to 2010, Guerra sent Donziger multiple emails. Steve
5 Donziger got on that stand and he lied saying he thought the
6 emails going back to 2008 were spam and he ignored them.

7 The truth lies in the actual email communications that
8 Donziger had with Mr. Fajardo at the time in 2008 while
9 Mr. Guerra was still on the bench, far from ignoring them,
10 saying it's urgent, should I call him back, what should I do?
11 Email in 2010, September 2010 that we talked about before.
12 There is no way, no how anyone could have thought it was spam
13 when Mr. Guerra writes to Mr. Donziger, "I will support the
14 matter of Pablo Fajardo so it will come out soon and well." A
15 lie, a transparent lie belied by Mr. Donziger's own
16 contemporaneous emails.

17 And, your Honor, another huge lie, a ludicrous lie.
18 He doesn't recall what was meant when his own Ecuadorian team
19 is communicating back and forth with him and asking for money
20 in connection with the puppeteer moving the puppet, but he
21 won't move his puppet unless the audience pays him something.
22 And it happens late October 2009, same date, two days later,
23 thousand dollars withdrawn from Selva Viva, thousand dollars
24 deposited into Guerra's account. Same thing with the budget is
25 higher in relation to the previous months since we're paying

DBQLCHE2

Summation - Mr. Mastro

1 the puppeteer. At or about the same time, a thousand dollars
2 out of Selva Viva, a thousand dollars deposited into Guerra's
3 account.

4 Who in their right mind is a U.S. lawyer receiving
5 email traffic like this using code names like puppeteer for
6 Guerra and puppet for Zambrano, and he says in this courtroom I
7 don't recall what that was, I don't know what that was. Maybe
8 those were jokes. It is ludicrous testimony, and it
9 corroborates Guerra's account, the money happening same time as
10 the code name.

11 And, your Honor, this is the part where Mr. Donziger
12 admits too much, and criminals often do this. They feel like
13 if they admit part of the story, they get away with lying about
14 the rest of the story because it's actually startling how much
15 Mr. Donziger's account and Mr. Guerra's account about the
16 infamous linked 2010 Honey Honey restaurant meeting coincide.
17 They both agree they met at the restaurant. They both agree
18 Fajardo set it up. They both agree that Guerra at the meeting
19 put right out there, floated it right out there, Mr. Donziger
20 says, \$500,000 bribe solicitation, had to be on behalf of
21 Zambrano who was the judge at the time, and that they'd get to
22 ghostwrite the judgment in their own favor.

23 Donziger says he said no. Guerra says he said, no, we
24 don't have that kind of money now. And, your Honor, Donziger
25 also says they sat around the 30 to 45 minutes shooting the

DBQLCHE2

Summation - Mr. Mastro

1 breeze and having coffee.

2 I ask two questions as a threshold matter. What
3 lawyer, what U.S. lawyer, having been told to go to a meeting
4 by Pablo Fajardo who obviously knew what the meeting would be
5 about and obviously would have told his cabeza what the meeting
6 was about, takes that meeting with Guerra knowing what's
7 coming?

8 But, second question, even if you accepted that
9 perhaps he didn't know going into the meeting, unlikely, but
10 even if you accepted that, what's he doing sitting around for
11 30 to 45 minutes having coffee after a bribe solicitation has
12 been made? It's not what a lawyer would do. It's what a
13 criminal does.

14 And guess what, how do we know who's telling the
15 truth? Guerra's bribery account rings true because Donziger
16 admitted on that stand that in fact the LAPs didn't have the
17 500,000 to pay Zambrano them. What deal ultimately gets
18 consummated? The deal that's struck is they're going to pay
19 Zambrano 500,000 out of judgment proceeds. That rings true.

20 Also, how do we know what happened? Because weeks
21 later, exactly what Guerra offered the LAPs' legal team
22 happened. They got to ghostwrite the judgment, and their
23 internal work product shows up word for word in the judgment.
24 And how do we know that Guerra's account rings true? Because
25 Mr. Donziger, who now says he was concerned and uncomfortable

DBQLCHE2

Summation - Mr. Mastro

1 about what had happened at the meeting, never reported it to
2 anyone. No one on his Ecuadorian legal team reported it to
3 anyone, even though they knew how to file complaints against
4 judges or to threaten to file complaints against judges when it
5 suited their purposes, including when they blackmailed Judge
6 Yanez.

7 And, your Honor, how do we know Guerra's account rings
8 true and he was in bed with his fellow criminals, Steve
9 Donziger, Fajardo, and company? Because a few months later,
10 2011, when we're in the midst of the count nine proceedings,
11 the LAPs lawyers go to Alberto Guerra to ask him to be their
12 expert on Ecuadorian judicial system and its honesty and
13 impartiality. Steve Donziger admits he knew about it and he
14 did nothing because they knew Guerra at that time was their
15 criminal confederate, end of story.

16 Your Honor, I've got to tell you about a shocking big
17 lie Steve Donziger got caught at this very trial. He took that
18 stand last Monday and Tuesday before your Honor ordered the
19 assembly minutes to be unredacted, the fateful January 15, 2013
20 assembly minutes to be unredacted. He thought they'd never see
21 the light of day. He thought no one would ever know what
22 happened in that January 15, 2013 meeting because virtually the
23 entirety of what he had to say had been redacted other than one
24 self-serving piece that he wanted to offer to this Court. He
25 didn't know when he took that stand what your Honor would rule.

DBQLCHE2

Summation - Mr. Mastro

1 He wasn't even thinking about that. He thought he'd get away
2 with it before this trial ended. And then what happened?
3 Later that same week, your Honor unredacted those minutes and
4 they were a revelation.

5 Many lies. Donziger lied this past summer at his
6 deposition saying he didn't believe he attended any assembly
7 meetings. Of course, he was at the January 15, 2013 meeting.
8 Donziger testified and his lawyers told you repeatedly that he
9 had been formally and officially removed as U.S. coordinator.
10 Mr. Keker -- fond farewell to Mr. Keker -- said Donziger had
11 become a pariah and separated and severed from those folks.

12 What's the truth from the asamblea minutes of
13 January 15? It's a temporary withdrawal from the case for the
14 moment because he's going to go to trial on the RICO. So
15 temporary withdrawal from the case.

16 THE COURT: Mr. Mastro, let me ask you this. Is it
17 Chevron's position that the minutes are accurate?

18 MR. MASTRO: Your Honor, I think the minutes in these
19 regards are admissions, and I think your Honor has a right to
20 credit those admissions.

21 THE COURT: I understand that, but what's your
22 position as to whether they're worthy of being credited?

23 MR. MASTRO: Your Honor asked the right question. And
24 in these regards, these admissions, I think your Honor should
25 credit them because they put the lie to Mr. Donziger's

DBQLCHE2

Summation - Mr. Mastro

1 testimony and that they show he committed perjury over and over
2 again.

3 And, your Honor, if I may just summarize the rest.
4 Your Honor, he lied about the effects of Joe Kohn's withdrawal.
5 He testified in this case that Kohn stopping funding was not
6 that big a deal because at the time the case was considered
7 attractive to lots of law firms and funders. He told the
8 asamblea on January 15, 2013 that it was a serious crisis when
9 Joe Kohn withdrew and chose not to continue financing. He lied
10 about lack of resources. And, your Honor, he lied on the
11 witness stand about lack of resources and the asamblea minutes
12 also prove it. He said he was under constant pressure for lack
13 of resources, extremely limited resources, that what happened
14 in this case effectively bankrupted me.

15 And he even said in his witness statement that what
16 Mr. Dahlberg, Chevron's forensic accounting expert, said about
17 commitment amounts, including recognizing 2 million committed
18 by Russ DeLeon, was overstated and simply not accurate.

19 What's the truth? January 15, 2013 asamblea minutes,
20 he tells the assembly they've got approximately 25 million came
21 in since Kohn, they got 12 law firms and lobbyists, and the
22 25 million came from Russ DeLeon. And the minutes reflect that
23 the No. 1 priority was enforcement, not that they didn't have
24 resources to pay for Donziger and the LAPs to defend themselves
25 here, but that they chose to pay for enforcement and to pull

DBQLCHE2

Summation - Mr. Mastro

1 back on paying here.

2 THE COURT: Let me come back to this January 15
3 meeting because I have questions in my mind about it. At the
4 time that meeting allegedly occurred and these minutes were
5 created, there was a motion to compel Mr. Donziger and his
6 Ecuadorian clients to produce the relevant documents that were
7 in the hands of the Ecuadorians, including Mr. Fajardo and
8 Selva Viva and so forth. I may have the chronology a little
9 off and I hope I'll be corrected if I do -- obviously, it's
10 verifiable. But the argument was at some point being floated
11 on Mr. Donziger's behalf that he had no control over the
12 documents.

13 MR. MASTRO: Correct, your Honor.

14 THE COURT: He couldn't be made to produce them. This
15 is in more or less the same time period, if my memory serves,
16 when the collusive Cordova lawsuit gets filed in Ecuador where,
17 contrary to everything else ever said in this court,
18 Mr. Fajardo tells an Ecuadorian judge I'm ready to turn over
19 all the Ecuadorian documents but, Judge, you should issue an
20 injunction preventing me from doing it. And, of course, there
21 is no adverse party, really, and that's what happens.

22 The question arises as to, at least in my mind, as to
23 whether this temporary withdrawal or termination or whatever it
24 was, if indeed there was anything, was an effort to distance
25 Mr. Donziger from the documents and had no other purpose, or at

DBQLCHE2

Summation - Mr. Mastro

1 least no other significant purpose, and is not credible as to
2 what went on there.

3 MR. MASTRO: Exactly, your Honor, and that was one of
4 the points I was going to make in this sequence. Cordova
5 collusive lawsuit, the order issues in Ecuador at or about this
6 same time. This was clearly orchestrated to give him
7 additional cover not to produce documents here even though he
8 was in control, remains in control.

9 And, your Honor, the fact of the matter is that
10 ascribing it in these minutes, even in the self-serving way
11 that it's done as a temporary withdrawal, tells you all you
12 need to know, that this was an artifice, a contrivance, a
13 manipulation, a manipulation of this Court and the proceedings
14 here. And, if I may, the admissions go deeper. The admissions
15 go deeper than just that, your Honor. They go to Mr. Donziger
16 here has told this Court he makes no apologies for anything
17 he's done and that he committed some -- his words --
18 inconsequential errors.

19 What did he say to the assembly? He said there is no
20 doubt that what I did is serious, a direct contradiction. And,
21 your Honor, he made the most damning admission of all, the
22 equivalent of a confession when he told the assembly the RICO
23 case did not spring only from the videos but also from Cabrera
24 and the judgment. There is no doubt that what I did is
25 serious, but even without this, there would have been a RICO

DBQLCHE2

Summation - Mr. Mastro

1 case. I agree to step aside even though the core of the
2 problem is not only me.

3 They redacted that section because Steve Donziger is
4 talking to his fellow criminal confederates -- Fajardo, Yanza,
5 they're all there. He's talking among the criminal
6 confederates and he is admitting there that it's not just about
7 what he did or what he did with Crude. It's about what they
8 all did with the Cabrera fraud. It's about what they all did
9 with the judgment fraud. And he's going to temporarily step
10 aside, not really stepping aside, even though the core problem
11 is not only me. It's what they all did together as criminals
12 to commit the Cabrera fraud and the judgment fraud. This is a
13 confession, your Honor.

14 And if I may say, Steve Donziger has a world view.
15 His world view, everybody else is lying but me. You saw in
16 this courtroom and in the depositions that were submitted in
17 evidence here, a dozen or more witnesses who testified that
18 Donziger misled, lied, or manipulated them into participating
19 in his scheme.

20 What's his testimony? They're all lying; I'm telling
21 the truth. I submit to your Honor that the biggest liar in
22 this courtroom besides Nicolas Zambrano was Steve Donziger.

23 Now, your Honor, how did this all happen? How did
24 Steven Donziger go from idealistic Harvard law student to
25 criminal mastermind over the course of two decades? We'll

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Summation - Mr. Mastro

1 never get a straight answer from him, but the truth lies in the
2 contemporaneous words and writings he uttered himself, to him,
3 the ends came to justify the means. The merits no longer
4 mattered. In his own words, quote, this is all for the court
5 just a bunch of smoke and mirrors and bullshit. We have enough
6 to get money.

7 He became all about the money, obsessed with it, in
8 fact. He spoke openly of "jacking this thing up to
9 30 billion," of "juicy checks coming from Chevron," of
10 "billions of dollars on the table." He even said -- and again,
11 your Honor, his words, not mine -- he even said the business
12 he's in, "the business of plaintiffs' law is to make fucking
13 money." And like any criminal, he'd do just about anything to
14 get it.

15 So with single-minded focus, he set about to make the
16 big score and set his sights on Chevron, putting together a
17 racketeering enterprise consisting largely of U.S. lawyers,
18 U.S. consultants, and U.S. funders focused on defrauding and
19 extorting Chevron into paying billions to make them go away.
20 It was a scheme so audacious, so bold, it would make even a
21 mafia boss blush.

22 But there was one thing Steven Donziger didn't count
23 on. Chevron didn't give into his pressure campaign. It stood
24 up. It refused to be extorted, and that's why we're here
25 today -- to right a wrong, to expose a fraud and extortion

DBQLCHE2

Summation - Mr. Mastro

1 scheme, and to get justice, the justice that Steven Donziger
2 and his confederates denied Chevron in Ecuador through bribery,
3 fraud, and blackmail; the justice that comes from respect for
4 the rule of law, something that Steven Donziger and his
5 confederates want no part of.

6 And as he continues to claim here that's just an
7 advocate for a cause, pursuing, in his own words, a "new
8 paradigm" for how to do a case, he isn't fooling anyone
9 anymore. This is no new paradigm for how to do a case,
10 Mr. Donziger. It's a shakedown scheme and a crime. And it
11 ends here with a resounding judgment that you can't get away
12 with this in America, Steven Donziger. Your actions have
13 consequences, and you and your confederates can't profit one
14 penny from your crimes.

15 Your Honor, the truth has finally been told in this
16 courtroom about what Steven Donziger and his confederates did
17 here, and that's a truth that will now be heard around the
18 world.

19 Thank you, your Honor.

20 THE COURT: Thank you. We'll take a short break.

21 (Recess)

22 THE COURT: All right. Who's first on the defense
23 side?

24 MS. LITTLEPAGE: I am, Judge.

25 THE COURT: All right, Ms. Littlepage.

DBQLCHE2

Summation - Ms. Littlepage

1 MS. LITTLEPAGE: Good morning.

2 THE COURT: Good morning.

3 MS. LITTLEPAGE: Judge, I'm going to cover some of the
4 issues that impact, some of the factual issues that cross over
5 the two defendants. Mr. Friedman is going to address some
6 issues unique to Mr. Donziger, and Mr. Gomez is going to talk
7 about issues unique to his clients.

8 THE COURT: Okay.

9 MS. LITTLEPAGE: Judge, what I would start with is
10 sort of a question which is the question of proof and the
11 burden of proof which is on Chevron because as we started this
12 trial, we told the Court that now is no longer the time for
13 accusations, innuendo, or inferences. Now is the time for
14 proof, and raw accusations or allegations are not proof.

15 Steven Donziger may well be a jerk; that's not a
16 crime. He uses bad language; that's not a crime. He's
17 disorganized and his accounting is a mess; that's not a crime.
18 Some people don't like Mr. Donziger; again, not a crime. He
19 can be abusive to people that work for him or with him; again,
20 not a crime. And it's not enough to just make accusations --
21 there must be proof that goes with it.

22 We told the Court at the beginning that basically the
23 evidence as we saw it fit into three different buckets. There
24 was a bucket of random acts, and we weren't really sure what
25 was going to be in that bucket and some things we thought were

DBQLCHE2

Summation - Ms. Littlepage

1 going to be there were there and some things weren't. There
2 was a Cabrera bucket, and then there was the only bucket that
3 we thought was important which is the allegations of bribery of
4 a judge.

5 The first two have no causation. There's no causal
6 connection between press releases or protests outside the
7 courthouse and the verdict. There is also no causation between
8 the Cabrera report and the verdict. And we know that because
9 Judge Zambrano specifically granted Chevron's motion to strike
10 the Cabrera report and not consider it in entering the verdict,
11 and then he relied on Chevron's evidence and predominantly
12 cited to Chevron's contamination data and to Chevron's experts
13 and to Chevron's expert reports when he wrote the verdict.

14 But we also know that just the underlying verdict
15 caused no harm to Chevron. That's not an enforceable verdict
16 under Ecuadorian law. You had to go to the next step in order
17 for Chevron to have any harm.

18 Well, then we get to the appellate court decision and
19 the appellate court's clarification. Again, no evidence and no
20 proof and not even any allegations that Mr. Donziger had
21 anything to do with the appellate court, the appellate court's
22 decision, or the appellate court's clarification, breaking the
23 causal connection.

24 And now just last week we got the Ecuadorian Supreme
25 Court decision. Again, not even an allegation or an inference

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Summation - Ms. Littlepage

1 that Mr. Donziger had anything to do with the Ecuadorian
2 Supreme Court, their decision, their 220-page, single-spaced
3 decision.

4 But we know that the Ecuadorian Supreme Court dealt
5 with and looked at virtually every issue presented in this
6 courtroom. We know specifically they dealt with Mr. Cabrera.

7 THE COURT: At least as of this moment, that's not a
8 part of the record in this case.

9 MS. LITTLEPAGE: Judge, we reached an agreement this
10 morning on admitting -- I think all the exhibits are going to
11 go in over the lunch hour and that is one of the exhibits that
12 is going to be admitted in the case.

13 The Ecuadorian Supreme Court dealt specifically with
14 Mr. Cabrera and all the allegations of Mr. Cabrera. The
15 Ecuadorian Supreme Court said that the Court of Appeals had
16 adequately addressed the Cabrera issue taking into account the
17 fact that it was not considered by the trial judge. And then
18 the Ecuadorian Supreme Court went on and said the trial judge
19 had expressly stated that the Cabrera report was excluded and
20 not considered.

21 THE COURT: So what effect are you asking me to give
22 to the Ecuadorian Supreme Court exactly?

23 MS. LITTLEPAGE: Well, Judge, I think you should give
24 the Ecuadorian Supreme Court decision the same weight and
25 consideration as the appellate court decision, which is there

DBQLCHE2

Summation - Ms. Littlepage

1 is a break of causation between any allegation on the Cabrera
2 report and any harm to Chevron. The Cabrera report didn't get
3 through to anything that that can cause Chevron harm.

4 THE COURT: You're asking me to take those two
5 decisions -- how shall I put it -- as in some way
6 authoritative, conclusive, aren't you?

7 MS. LITTLEPAGE: I'm asking you to take them as
8 evidence that there's no causal connection because the
9 underlying harm to Chevron that Chevron claims is based on a
10 verdict that was appealed and affirmed by an appellate court,
11 appealed and affirmed by an Ecuadorian Supreme Court, both
12 levels of appeal where there is no allegations of any fraud or
13 RICO action confirm that Cabrera had no impact on their
14 decisions.

15 So you take it for the evidence, as all evidence comes
16 in, as evidence that there is no injury that Cabrera report
17 bleeds through in a causal link. That link is broken by the
18 verdict, by the appellate court, and by the Ecuadorian Supreme
19 Court, which makes those claims sort of claims to nowhere.

20 THE COURT: You're in effect, are you not, asking me
21 to recognize those two decisions?

22 MS. LITTLEPAGE: Judge, I think you recognize them as
23 evidence of what happened in Ecuador, just like a pleading was
24 filed in Lago Agrio. You accept that evidence if that's what
25 was said or filed with that court. You accept as evidence the

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Summation - Ms. Littlepage

1 appellate decision and the Ecuadorian Supreme Court decision.

2 THE COURT: Every word of it is hearsay, right?

3 MS. LITTLEPAGE: Well, Judge, I think that they're
4 being offered not for the truth, but that doesn't mean that the
5 underlying -- hold on.

6 Judge, that doesn't mean that the underlying issues of
7 comity, which is one of our affirmative defenses, the
8 underlying issue of what's actually in the verdicts can be
9 ignored or disregarded by this Court. There is a process in
10 Ecuador. The process has continued and is now finished.

11 THE COURT: And you're asking me to recognize the
12 result.

13 MS. LITTLEPAGE: Well, I'm asking you to recognize
14 that the Ecuadorian Supreme Court ruled and what its ruling is
15 and what's the basis of that ruling and the fact that that
16 court says Cabrera has no causal link. It is what it is. It
17 says what it says. And like all evidence, the Court will
18 consider it the way the Court wants to.

19 Which brings us to the third bucket which we told the
20 Court at the beginning was the one we were going to focus on,
21 and I think that is the only bucket of evidence that has any
22 impact and that is the allegations of bribing the judge. And
23 we would say, Judge, that there is a giant hole in the evidence
24 on that topic. It is based on the testimony of a single
25 witness, an admitted liar, and a witness whose story has

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Summation - Ms. Littlepage

1 changed multiple times and whose story has changed multiple
2 times directly linked to money and interactions with Chevron's
3 lawyers.

4 So let's start the story in April of 2012. In April
5 of 2012, Alberto Guerra was no longer a judge. He was in tough
6 financial trouble. His house was under repair and he was
7 living in the house because he couldn't afford to repair it.
8 And the newspapers carried the story of a verdict that was
9 given to a judge on a jump drive. The newspapers carried a
10 story of a verdict that was given to a judge on a jump drive
11 that the judge then cleaned up and issued as his own.

12 And it won't surprise you to know that within a couple
13 of days, Alberto Guerra went to Chevron and said I have a story
14 to tell you. I have a story that I think is worth a million
15 dollars. Here's my story. My story is that on Friday,
16 January 28, I met Judge Zambrano at the Quito airport and I got
17 a verdict on a flash drive and I went home to my house and I
18 worked on my computer at my home in Quito and I worked on this
19 verdict on the flash drive and I didn't consult with Judge
20 Zambrano the entire weekend, there was no reason for it, and I
21 cleaned up the verdict and then the verdict was issued under
22 Judge Zambrano's name -- a story startling similar to the one
23 that had been in the newspaper the week before.

24 But where's the proof? Well, first of all, Chevron
25 said bring us proof. We'll buy your computer from you because

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Summation - Ms. Littlepage

1 if you worked on the verdict at your home computer at your
2 house in Quito, the verdict will be there, right there on that
3 computer. And they paid him money and they got that computer
4 and what did they find? No verdict.

5 So then they said give us all your jump drives because
6 if Judge Zambrano handed you this jump drive at the Quito
7 airport with the verdict on it, it will be there. The flash
8 drive will have the verdict. And they got all the flash drives
9 and what did they find? No verdict.

10 But what Alberto Guerra learned is that money rains
11 down on him if he gives Chevron the story they want. And so he
12 got cash -- \$48,000 for documents. He got a new computer, he
13 got a new cell phone. But best of all is he got the promise of
14 America.

15 And I can tell you, Judge, as an immigrant that is the
16 pot of gold at the end of the rainbow. He got promised by
17 Chevron that if he told the story they wanted, they would bring
18 him to America, his wife, his children, they would reunite him
19 with his child that was already living in America illegally.
20 They would get the child who was living in America illegally
21 immigration papers.

22 And so Mr. Guerra got on a plane and went to Chicago
23 and in November he met with the Gibson Dunn lawyers for the
24 first time and this was the meeting where he was going to get
25 his deal for America.

DBQLCHE2

Summation - Ms. Littlepage

1 And after meeting with the Gibson Dunn lawyers and
2 after getting an agreement, his America deal, he had a second
3 story because the first story didn't work. There was nothing
4 on his home computer. There was nothing on a flash drive.
5 There was no corroborating proof. So then we got a second
6 story. The second story is that on the same weekend, two to
7 three weeks before the verdict, so it's not even like we
8 confused the weekends and I thought I was in Quito this weekend
9 but it was really three weekends later that I went to Lago
10 Agrio on a bus, no. The exact same weekend he muddled up.

11 He wasn't in Quito meeting Judge Zambrano at the
12 airport. He was trudging along on a bus all the way to Lago
13 Agrio. The verdict wasn't on a flash drive. Now the verdict
14 was on a laptop that Chevron could now walk into this courtroom
15 and say we can't get access to, that's why we can't find the
16 verdict.

17 He wasn't meeting Judge Zambrano at the Quito airport.
18 He was actually in Judge Zambrano's apartment in Lago Agrio.
19 And instead of not speaking to Judge Zambrano the entire
20 weekend because there was no reason for it, he is talking to
21 the judge on the phone and having dinner together every
22 evening.

23 So that's story No. 2. That story sold better. That
24 story got him to America. That story got him moving expenses,
25 \$1,000 a month, a car, health insurance for him, and every

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Summation - Ms. Littlepage

1 person in his family, and an immigration lawyer for his entire
2 family to be reunited in America.

3 But you have to step back and look at the whole story
4 that Mr. Guerra came up with and it's a story that we heard
5 here in the courtroom after three months of prep time. Three
6 months, every Monday, Alberto Guerra flew from Miami to New
7 York. He met with the Chevron lawyers Monday through Friday
8 and flew back to Miami on Friday evening. For three months he
9 was prepped for his testimony here.

10 And the story starts in 2009 because in May and June
11 of 2009, Chevron had tried to prove corruption in Ecuador. It
12 was very important to them that they get to show that the
13 Ecuadorian system was corrupt because by May or June of 2009,
14 the judicial inspections were over. Everybody knew what the
15 contamination samples showed. Chevron knew what their own
16 experts reports said. They knew what their experts'
17 contamination results showed. So now they had to set in place
18 an answer because if the verdict came out against them, they
19 needed something to take to enforcement courts to say Ecuador
20 is corrupt.

21 So they started the Borja sting and Mr. Borja, the
22 person who had actually done the judicial inspection samples
23 and transported them back and forth for them tapes Judge Nunez.
24 And Chevron issues a press release that says, look, we have
25 proof that judges in Ecuador are taking bribes. Except when

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Summation - Ms. Littlepage

1 you actually listened to the Borja tapes, Judge Nunez didn't
2 accept a bribe. There was nothing about Judge Nunez being
3 bribed.

4 But here is Chevron in May or June desperately seeking
5 corruption evidence of judges in Ecuador, and then what
6 happens? Judge Nunez recuses himself over the allegations.
7 Judge Zambrano is assigned to the case. And in October of
8 2009, Chevron's savior arrives, Alberto Guerra. He approaches
9 Chevron and says I can prove corruption in Ecuador because I am
10 willing to accept a bribe to deliver the verdict for you.

11 Well, the first thing you would think Chevron would do
12 would be report this. This is their proof. This is the thing
13 they've been looking for. This is the whole Borja setup. Yet,
14 none of that happens. They report Mr. Guerra to no one.

15 So let's look at the timeline of 2009, the
16 interactions.

17 THE COURT: So basically both sides agree that at
18 different times Guerra approached them and offered to throw the
19 case and neither side reported him.

20 MS. LITTLEPAGE: Correct.

21 THE COURT: Not Mr. Donziger and not Chevron's
22 lawyers.

23 MS. LITTLEPAGE: And with injunctive relief as the
24 only remedy, the person asking for injunctive relief must come
25 with clean hands. And when we've got the same conduct on both

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Summation - Ms. Littlepage

1 sides, that's the exact scenario where injunctive relief would
2 not be appropriate.

3 But let's look at the timeline of 2009, Judge, because
4 it starts with a phone call between Mr. Guerra and Mr. Racines,
5 the lawyer for Chevron. Alberto Guerra said he didn't remember
6 the timing of that interaction, but he thought that
7 Mr. Racines's memory was probably more clear than his.

8 So let's look at Mr. Racines's affidavit. Mr. Racines
9 says that before October 16, he received a cell phone call from
10 Mr. Guerra. His boss, Mr. Callejas's affidavit, actually tells
11 us that this phone call occurred between October 8 and
12 October 16. So we have at least the start of a timeline.
13 October 8 to October 16, Mr. Guerra and Mr. Racines talk.
14 Mr. Guerra tells Mr. Racines that he has this offer for him
15 that Chevron can buy the verdict.

16 There is then a second phone call. Mr. Racines tells
17 us that's a few days later. And then there's the meeting at
18 the El Chacal restaurant, a meeting which Mr. Racines goes to
19 knowing he is going to discuss a potential bribe with
20 Mr. Guerra, a meeting where he doesn't just have coffee, but a
21 meeting where he goes and has dinner and pays for the bill for
22 Alberto Guerra and the Chevron lawyer to sit and eat and
23 discuss corruption of the judge in Ecuador.

24 Mr. Racines tells us that after one or two months
25 after the second phone call is when he met up with Mr. Guerra

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1 at the El Chacal restaurant, which would put us between
2 November 10 and December 10.

3 Then we know Mr. Guerra tells us that he goes back to
4 Mr. Zambrano and says Chevron says no. Mr. Zambrano tells him
5 to go meet with Pablo Fajardo. And Mr. Guerra tells us some
6 days later, he meets with Mr. Fajardo, and then shortly
7 thereafter -- he meets with Mr. Fajardo. He then meets with
8 Mr. Donziger a week or two later at the Honey Honey restaurant
9 in the city of Quito. This is Mr. Guerra's testimony.

10 So if you look at some days later and shortly
11 thereafter and a week or two later, we're between December 1
12 and December 15 with the meeting with Steven Donziger at the
13 Honey Honey restaurant in Quito. And this is where,
14 apparently, it all starts. This meeting is where Mr. Guerra
15 says Mr. Donziger reached an agreement with him, an agreement
16 of his involvement in the Chevron case.

17 So let's look at what Mr. Guerra remembers.
18 Mr. Guerra remembers that he reached a deal with Pablo a month
19 or a month and a half after Mr. Zambrano's first term. And we
20 know from the stipulation that the Court asked the parties to
21 enter into that that started October 21, 2009.

22 So a week or two later, he meets with Mr. Donziger at
23 the Honey Honey restaurant, which means that Mr. Guerra's
24 testimony and Mr. Racines's affidavit match up fairly
25 cohesively. This meeting with Mr. Donziger at the Honey Honey

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Summation - Ms. Littlepage

1 restaurant, which is the foundation, the foundation, the core,
2 the basis of Chevron's claim, occurs between November 28 and
3 December 15.

4 The problem with that, Judge, is we have
5 Mr. Donziger's immigration records. We know that Mr. Donziger
6 is not in Ecuador any of those days. In fact, Mr. Donziger is
7 in the U.S. with his mother in hospice who dies the first week
8 of December of 2009. So the core meeting, the foundation
9 meeting of the Honey Honey with Mr. Guerra did not occur.
10 Mr. Donziger is nowhere near the country of Ecuador at the time
11 this meeting happened.

12 Where's the proof? Mr. Guerra brought us proof of
13 TAME shipping records, proof we don't disagree with because
14 Mr. Zambrano, Judge Zambrano and Mr. Guerra both agree that
15 they shipped documents back and forth as Mr. Guerra was
16 working, helping draft some of Judge Zambrano's orders.

17 So what's the second piece of proof? The second piece
18 of proof was a cash deposit slip. And this one I find
19 interesting, Judge, because one of the things Mr. Callejas told
20 us when he came is that he gets paid \$33,000 a month to
21 represent Chevron. So you have one of the top lawyers in Quito
22 that you pay \$33,000 a month to represent you, and yet when it
23 comes time to get the key piece of evidence, the deposit slip
24 from the bank that's going to prove your case, do you send
25 Mr. Callejas to the bank, do you have Mr. Callejas go to the

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Summation - Ms. Littlepage

1 court and get a court order, or do you send Mr. Guerra,
2 himself, by himself, to the bank to bring what he says is a
3 copy of a deposit slip from a secretary at Selva Viva?

4 He admits that the number for everybody in Ecuador is
5 freely available on the internet. And when Mr. Guerra was on
6 the stand, I asked him to identify his own handwriting on some
7 other bank documents because it seemed stunning to me how
8 similar Mr. Guerra's own handwriting is to the deposit slip of
9 the Selva Viva alleged secretary that they sent Mr. Guerra to
10 the bank to get.

11 So we know that the first meeting in the fall --

12 THE COURT: Let me interpose a question. You didn't
13 address the apparent match or similarity between the Ximena
14 signature on the deposit slip and on her national identity
15 card.

16 MS. LITTLEPAGE: I did not, Judge.

17 THE COURT: Do you want to address that?

18 MS. LITTLEPAGE: I can't address it. I don't know the
19 answer to that. I know the number is very, very, very similar
20 in handwriting.

21 So we know the first meeting didn't occur. Can't
22 have. There's no question. Honey Honey in November and
23 December of 2009 with Mr. Donziger did not occur.

24 So let's look now at the fall of 2009 and Mr. Guerra's
25 story.

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Summation - Ms. Littlepage

1 THE COURT: I'm sorry. Just I'm really trying to
2 understand the thesis. The "did not occur" assertion rests on
3 not a firm date in December when this allegedly occurred. It's
4 sort of a reconstruction by you from vaguer testimony by people
5 about it was, well, some period of time after X, whatever X
6 was.

7 Am I right?

8 MS. LITTLEPAGE: Well, it's actually reconfirmed by
9 both Mr. Guerra's testimony and Mr. Racines' testimony. I
10 built the timeline on both of them so if the Court had any
11 question, you would see both of them track very similar
12 timelines and you end up at the same frame.

13 THE COURT: But neither one of them starts from a hard
14 date and says it was one week or two weeks after. It's
15 fuzzier, isn't it?

16 MS. LITTLEPAGE: No, sir. Mr. Racines's timeline
17 starts with an affidavit he signs in October 16, 2009. In that
18 affidavit, he says a few days ago Mr. Guerra called.
19 Mr. Callejas's affidavit actually gives us better evidence and
20 he frames that time frame between October 8 and October 16. So
21 we do have a firm date to start with between October 8 and
22 October 16 is the first phone call.

23 THE COURT: What comes next?

24 MS. LITTLEPAGE: There's a second phone call. There's
25 a meeting at the El Chacal restaurant. Judge Zambrano is

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1 officially on the case. And then there's the meeting at the
2 Honey Honey restaurant.

3 THE COURT: I know, but is there hard evidence of what
4 the time intervals are after October 16?

5 MS. LITTLEPAGE: Well, there's two different time
6 intervals, Judge. There's Mr. Racines's time interval of the
7 El Chacal restaurant and him telling, Chevron telling
8 Mr. Guerra no, and then meeting at the Honey Honey. And then
9 there's a separate timeline of Mr. Guerra saying it was one or
10 two months after Mr. Zambrano was assigned to the case that I
11 met with Pablo Fajardo. And those times match up.

12 THE COURT: So one or two months after what?

13 MS. LITTLEPAGE: Mr. Zambrano is assigned to the case.

14 THE COURT: Okay. So you hang everything on, for that
15 piece of your argument that the meeting didn't take place, on
16 the proposition that when someone four years after the events
17 is asked how much later did X happen than Y and says a month or
18 two, that can't possibly mean a month or three or two or three
19 months; is that right?

20 MS. LITTLEPAGE: Even if it was a month or two or
21 three, Mr. Donziger is still not in Ecuador.

22 THE COURT: He's in Ecuador in January.

23 MS. LITTLEPAGE: He is, sir.

24 THE COURT: So if it's three months, then it's not
25 impossible.

DBQLCHE2

Summation - Ms. Littlepage

1 MS. LITTLEPAGE: But it wouldn't match up with
2 Mr. Racines's timeline, which is why I did both of them because
3 they match up --

4 THE COURT: So come back.

5 MS. LITTLEPAGE: -- with very similar dates.

6 THE COURT: Come back to Mr. Racines. You start --
7 let's just assume for the sake of argument you're right about
8 October 10 to 16 being the starting point.

9 MS. LITTLEPAGE: 8th through the 16th.

10 THE COURT: Pardon?

11 MS. LITTLEPAGE: The 8th to the 16th.

12 THE COURT: Okay.

13 MS. LITTLEPAGE: Yes, sir.

14 THE COURT: Then the two intervals according to
15 Racines are what and what?

16 MS. LITTLEPAGE: He says a few days later he got a
17 phone call from Mr. Guerra, Mr. Callejas supports that on his
18 affidavit, and then he says one to two months later he meets at
19 the El Chacal restaurant.

20 THE COURT: So they both say one to two months. And
21 in each case -- this is a question, not a statement -- and in
22 each case you have somebody years later talking about how long
23 the interval was and they both say one to two months, and
24 whatever the frailties of human memory or whatever, they may be
25 right, they may be wrong.

DBQLCHE2

Summation - Ms. Littlepage

1 Is that about it?

2 MS. LITTLEPAGE: Well, they may be right, they may be
3 wrong, but Mr. Donziger says they're wrong and his immigration
4 papers say they're wrong.

5 THE COURT: No, his immigration papers say only that
6 he didn't get there until January 5. He doesn't know what
7 these intervals were, according to him, because he knows
8 nothing about it. Correct?

9 MS. LITTLEPAGE: Correct.

10 THE COURT: Just so I understand. Thank you.

11 MS. LITTLEPAGE: Thank you.

12 If we look to the fall of 2010, Chevron moves to
13 recuse Judge Ordonez knowing that Judge Zambrano will be
14 assigned to the case, and that also raises a question, Judge.
15 Within a very short period of time, Alberto Guerra is back
16 offering them again to buy the verdict. So they've moved to
17 recuse Ordonez.

18 THE COURT: I think he was a seller. I thought he was
19 a seller. It's a joke.

20 MS. LITTLEPAGE: Sell the verdict to Chevron to buy
21 the verdict.

22 When Chevron moves to recuse Judge Ordonez, they know
23 the evidence is closed. They know the verdict is close. They
24 know the next person on the case is going to write the verdict.
25 They know it's going to be Judge Zambrano. And the question

DBQLCHE2

Summation - Ms. Littlepage

1 has to be is did they just -- is this an action they took
2 because they knew they would get a do-over card. Remember,
3 Mr. Racines and Mr. Callejas have signed affidavits from the
4 fall before, kept privately, not released, but kept privately
5 confirming Guerra trying to sell them the verdict the year
6 before. When they put Zambrano back on the case, is that just
7 a step knowing that whatever Zambrano does, they can pull out
8 these old affidavits and get a do-over card claiming fraud and
9 bribery?

10 So let's look forward at the fall of 2010 where
11 Mr. Guerra says there was a second meeting at the Honey Honey.
12 Mr. Donziger says this is the first meeting he had with
13 Mr. Guerra at the Honey Honey. But what they both agree on is
14 no deal is struck. Mr. Guerra in his witness statement says
15 that Mr. Donziger did not agree to pay any money. Mr. Donziger
16 says he did not agree to pay any money. So no deal is struck
17 in the fall of 2010.

18 So where's the proof? Again, we get back to the
19 testimony of Alberto Guerra, a triple hearsay statement where
20 he says Zambrano told him that Pablo Fajardo told him that
21 there would be a deal. That's it. And it comes right down to
22 it, the entire case rests on Zambrano told Guerra that Pablo
23 Fajardo told Zambrano that there was a deal.

24 And we know that every, virtually everything that
25 Steven Donziger has written in the last ten years is now in

DBQLCHE2

Summation - Ms. Littlepage

1 Chevron's possession: his emails, his diary, his memos. Not a
2 single thing --

3 THE COURT: Excuse me, doesn't that cut off sometime
4 certainly earlier than 2013, maybe earlier than 2012, maybe
5 even earlier than that? I'm not sure offhand.

6 MS. LITTLEPAGE: What it doesn't cut off is any emails
7 about a verdict, any drafts of a verdict, any writing of a
8 verdict and sending it to Ecuador to be entered by Judge
9 Zambrano. And we know that for the month of January of 2011,
10 Mr. Donziger spends one, two, three, four, five, six full days
11 in depositions with Chevron.

12 So, again, where's the proof? Then Chevron brought us
13 the memory aid that they said was proof of Mr. Guerra's story,
14 a memory aid, a document that ends in 2009, clearly unfinished
15 because it has a title, Cabrera, and nothing below it. And a
16 document that there's not just one story about or two stories,
17 but for this piece of evidence Mr. Guerra has three stories.

18 The first story is that Pablo emailed it to him on
19 Saturday or Sunday at his home in Quito. The second story is
20 that he received it late afternoon or the night of the first
21 day, Friday, via email at an internet cafe in Lago where he had
22 to leave Judge Zambrano's apartment and go to the internet cafe
23 and get the email and print it out.

24 But we know from his hotmail account that he has no
25 emails from Pablo Fajardo. He doesn't even have Pablo

DBQLCHE2

Summation - Ms. Littlepage

1 Fajardo's contact information in his hotmail. So for trial we
2 got a brand new story. For trial he said for the first time in
3 two years, year and a half, that Pablo brought the memory aid
4 over in person to Zambrano's apartment.

5 And we have a document, we have an email that Chevron
6 says is proof of an interaction between Mr. Donziger and
7 Mr. Guerra because it talks about from Mr. Guerra, I will
8 support the matter of Pablo Fajardo so it will come out soon
9 and well.

10 But when Mr. Guerra was asked about this exact
11 document by Chevron whether that was referring to the Chevron
12 case, he said the truth is no.

13 And so let's move past bribing the judge to authorship
14 because that's the second part of Chevron's claim is that the
15 proof they have of RICO violations and fraud is authorship, is
16 that the verdict was written by the plaintiffs, which brings us
17 to the No. 1 question of the case: Who wrote the verdict?
18 This is the question. Who wrote the verdict?

19 There are actually people who do authorship, who
20 decide and look at prior writings, prior documents, and come up
21 with conclusions about who wrote a document. Interestingly,
22 after all the money Chevron spent and all the effort Chevron
23 went to in this case, the one thing they didn't bring in this
24 courtroom is an expert to talk about who wrote the verdict.

25 We know that Mr. Guerra told us that Chevron

DBQLCHE2

Summation - Ms. Littlepage

1 immediately asked him for his prior orders to look to see if
2 his prior orders were similar to the verdict. So we knew
3 Chevron was looking at this issue because they immediately
4 asked Mr. Guerra for his prior orders. We know they had access
5 to Judge Zambrano's writings because Mr. Guerra told you he
6 never wrote any of Judge Zambrano's criminal orders. We know
7 that they had Mr. Donziger's writings. They had Pablo
8 Fajardo's pleadings.

9 And we know that they hired people who do authorship.
10 They hired Mr. Lynch and Stroz Friedberg who admitted that
11 Stroz Friedberg has an entire division that performs authorship
12 analysis and he was not asked to do an authorship analysis in
13 this case.

14 They hired Mr. Leonard, the man who told you that he
15 helped police solve murders based on a single sentence written
16 by a husband before the wife's murder that he could prove also
17 matched up to the ransom note that he said was involved in the
18 murder. Mr. Leonard was not asked to do any authorship
19 analysis.

20 They brought you Patrick Juola. Mr. Juola actually
21 created this incredible computer system, this system that looks
22 at authorship, costs \$2 million. It's his pride and joy. It's
23 not impacted by language. It can search for authorship through
24 various languages. And what did they have Mr. Juola do? OCR
25 the record. What they never asked him to do is look at

DBQLCHE2

Summation - Ms. Littlepage

1 authorship.

2 So we know that they went to the leading experts in
3 the country on authorship, people who pride themselves on their
4 expertise on authorship, pride themselves on being able to
5 compare the writings of one person, person A and the writings,
6 the suspected writings, and be able to prove that person A
7 wrote the suspected writing. And what's the one thing they did
8 not ask any of these people to do is answer the question in the
9 case: Who wrote the verdict?

10 So let's talk about Judge Nicolas Zambrano because
11 yesterday afternoon was a critical piece of evidence.
12 Mr. Lynch, one of the last questions asked in the entire trial,
13 Chevron's expert, agreed that the verdict was started in
14 October of 2010 on a desktop computer in Judge Zambrano's
15 office. The fight was whether it was the new computer or the
16 old computer, but there was no dispute that the verdict was
17 started in October of 2010 on a desktop computer in Judge
18 Zambrano's office.

19 Neither, none of that evidence matches up with Judge
20 Guerra's various stories. It's not on a jump drive. It's not
21 on Pablo Fajardo's laptop. The verdict was started in October
22 of 2010 on a desktop computer in Judge Zambrano's office.

23 And it was Mr. Guerra who told us that Judge Zambrano
24 hired Ms. Calva. It was Judge Guerra who told us that
25 Ms. Calva came day by day to type for Judge Zambrano.

DBQLCHE2

Summation - Ms. Littlepage

1 Mr. Lynch told us that 30 percent of Judge Zambrano's
2 verdict is in quotation marks, but we know that he actually
3 quoted a lot more than 30 percent because, for example, Judge,
4 in the Esmeralda Communities case, the one against
5 Petroecuador, pages of that Ecuadorian Supreme Court decision
6 is copied almost verbatim into the verdict.

7 And when the big issue was raised about how Judge
8 Zambrano could have talked about Colombian and Argentinian and
9 French law, the answer is easy -- he copied it from the
10 Ecuadorian Supreme Court case which went through and discussed
11 Colombian, Argentinian, and French law.

12 We know that Judge Zambrano doesn't a hundred percent
13 understand American law because it was the Court itself that
14 asked Judge Zambrano to explain his -- what the verdict said
15 about American law. He got it somewhat wrong in this courtroom
16 and, interestingly, he got it wrong here the exact same way he
17 got it wrong in the verdict. He doesn't understand strict
18 products liability law in America. He didn't get the theory
19 and the principles of strict products liability a hundred
20 percent right here, and he got it exactly the same way
21 incorrect in the verdict.

22 The fusion memo. Chevron makes a lot of hay about the
23 fusion memo, but Judge Zambrano told the Court that he recalled
24 seeing the fusion memo before. And we know that the fusion
25 memo exhibits are in the Ecuadorian Lago Agrio record and we

DBQLCHE2

Summation - Ms. Littlepage

1 know that he dictated from the fusion memo and from those
2 exhibits straight into the verdict.

3 So then suddenly in the middle of the trial in light
4 of all this evidence, we took a different direction and Chevron
5 started talking about President Rafael Correa. And suddenly we
6 had experts talking about the lack of confidence in the
7 judiciary overall in Ecuador, who on cross-examination was
8 shown that in fact the Ecuador judiciary system is the same now
9 as it was when Chevron was begging to go back to Ecuador saying
10 it was a completely fair forum.

11 And what we know is that there is not a scrap of
12 evidence other than inference and inference and innuendo that
13 Rafael Correa had anything to do with the Zambrano verdict,
14 nothing to do with the appellate court decision, and it would
15 be hard pressed to even argue that he had any influence over
16 the Ecuadorian Supreme Court decision which removed \$9 billion
17 of the damages last week.

18 (Continued on next page)

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DBQ8CHE3

Summation - Ms. Littlepage

1 MS. LITTLEPAGE: A very wise judge in the *Pavlov v.*
2 *Bank of New York Company* case in 2001 wrote, "It is not the
3 business of our courts to assume the responsibility for
4 supervising the integrity of the judicial system of another
5 sovereign nation."

6 Judge, you were right then, and you are right now.

7 What Chevron's burden is is to prove their case, not
8 with assertions, not with allegations, but to prove their case,
9 every element of that case, and one of the crucial elements is
10 causation, that conduct caused them injury.

11 Thank you, Judge.

12 THE COURT: Mr. Friedman.

13 MR. FRIEDMAN: Thank you, your Honor.

14 THE COURT: I trust you are going to supply me with
15 your PowerPoint or whatever it is, the graphics?

16 MS. LITTLEPAGE: Yes.

17 THE COURT: Thank you.

18 MR. FRIEDMAN: Your Honor, this is an unusual closing
19 argument for me to make. Ordinarily, I study the facts, spend
20 more time with the facts and the fact finder. Ordinarily, I
21 have studied the law more than most of the judges I appear
22 before. And that gives me a certain standing, I feel, to argue
23 to the court, argue to the jury, about what the law or the
24 facts should be or what they should find. And here it has not
25 escaped me that this fact finder, this judge, has spent more

DBQ8CHE3

Summation - Mr. Friedman

1 time with the facts, more time with the law than I probably
2 ever will, the law and the facts of this case. And I don't
3 learn the facts as fast as Ms. Littlepage. She has been sort
4 of a wonder to me in the way that she has been able to learn
5 the facts as quickly as she had.

6 So it seems a little presumptuous of me to stand here
7 and argue to the Court about what you ought to do with this
8 case. It occurred to me to not even make a closing argument.
9 I seriously thought about that. And I thought, well, in a
10 sense, my weakness may be something of a strength. It occurred
11 to me that I might have a few things to offer to the Court as
12 it thinks it's way through this case. Maybe a sense of
13 detachment that comes from a clean slate and being new to the
14 scene. Maybe a fresh set of eyes, a new perspective.

15 My first observation in getting involved with this
16 case that can't escape anybody is how contentious it's been.
17 Big things, small things, important things, unimportant things,
18 everybody was fighting about everybody, disagreeing about
19 everything. But what struck me right from the beginning is
20 that both sides agreed what your verdict would be. They both
21 were expecting the exact same thing from you. And that seemed
22 curious to me for several reasons, reasons that you don't need
23 to know much about this case to understand.

24 Chevron is asking this Court to do some extraordinary
25 things and take some extraordinary positions. First among

DBQ8CHE3

Summation - Mr. Friedman

1 them, of course, is that Chevron wants you to say, needs you to
2 say, that Mr. Guerra is a credible witness.

3 Now, good lawyers, good judges can construct an
4 argument on either side of the issues, on any issue, and
5 certainly someone could construct an argument for Mr. Guerra's
6 credibility in the face of all the facts Ms. Littlepage just
7 walked you through, the ones you saw yourself. But why would
8 you want to strain to come to the conclusion that Mr. Guerra is
9 a truthful witness, that he testified truthfully in this court?
10 Maybe because you believed people on our side of the case have
11 not been as forthcoming with the Court as they should have
12 been. Maybe because you think people associated with our side
13 of the case have been disrespectful to the Court. Maybe the
14 Court finds Mr. Donziger's personality style of lawyering
15 offensive. There are plenty of reasons, from what I have seen,
16 for the Court to have strong feelings about this case and
17 towards our side of the case.

18 THE COURT: Mr. Friedman, I think you have gotten into
19 a vein that is really not appropriate.

20 MR. FRIEDMAN: I will move on then, your Honor.

21 Let me say this. I think all of us involved in this
22 case have had to navigate through heightened feelings,
23 acrimony, less than ideal conduct, using the law as a compass.
24 And that's what I wanted to talk to the Court about. I would
25 like to share with the Court how this case looks to a lawyer

DBQ8CHE3

Summation - Mr. Friedman

1 with fresh eyes, to a lawyer with fresh eyes who is trying to
2 look to the law as a compass for how this case ought to come
3 out.

4 One of the things that struck me, and struck me again
5 as Mr. Mastro made his argument, is the wealth of factual
6 material in this case, the literally thousands of documents,
7 the hundreds of hours -- I guess they haven't all been
8 admitted, but originally the hundreds of hours of Crude
9 outtakes, the enormous volume of factual material. And the
10 Court is probably aware, in the movie-making business, we saw
11 it exemplified by Crude, and most commercial films take
12 hundreds, if not thousands of hours of footage, and then you
13 can edit and you can make any kind of film you want. You can
14 take those thousands of hours and make a comedy, a tragedy,
15 anything in between.

16 To an extent, that same thing is true here. Many of
17 the things that Mr. Mastro talked to you about are out of
18 context. Some of them you may have recognized as out of
19 context. Some of them you may not have recognized as out of
20 context. I will just use one example where he quoted Mr.
21 Donziger as saying, if you tell a lie often enough, it becomes
22 the truth. And if you go to the place where he says that in
23 the Crude outtakes, what you will see is he is complaining
24 about Chevron and his fear that Chevron is going to succeed, in
25 his view, in passing lies off as the truth.

DBQ8CHE3

Summation - Mr. Friedman

1 THE COURT: What is the exhibit number, please?

2 MR. FRIEDMAN: It's in the Crude outtakes.

3 THE COURT: What is the exhibit number?

4 MR. FRIEDMAN: I don't know offhand.

5 THE COURT: Mr. Mastro, do you know the exhibit
6 number?

7 MR. MASTRO: Yes, I do, your Honor. Because it's not
8 in the Crude outtakes. It's an e-mail that he signs Steven
9 Donziger, and the e-mail is 1059. It's an August 13, 2008
10 e-mail.

11 THE COURT: It may also be in the outtakes.

12 MR. FRIEDMAN: I think it is, your Honor. I am pretty
13 sure it's in the outtakes. I have recently looked at that DX
14 exhibit.

15 Your Honor, there are others. They were in the Crude
16 outtakes. If you look at, I think it's PX 4, which is the
17 fourth Crude outtake, that's the one we had the little dispute
18 about where the sentence was taken out of the middle of other
19 two other sentences that Mr. Donziger has said.

20 My point is simply this, your Honor. The wealth of
21 factual information is both a boon to the Court and a potential
22 trap. And the potential trap is that you take things said by
23 either side at face value without seeing the full factual
24 underpinnings or context.

25 THE COURT: Well, just so that we are all clear,

DBQ8CHE3

Summation - Mr. Friedman

1 Plaintiff's Exhibit, and I am not saying it's not an outtake
2 also, but Plaintiff's Exhibit 1059 is an e-mail string.

3 It begins with an e-mail on August 13, 2008, from Mr.
4 Donziger and Mr. Fajardo. And the e-mail in its entirety
5 reads: "If you repeat a lie a thousand times, it becomes the
6 truth."

7 On the following day, Mr. Fajardo responded, and the
8 e-mail in its entirety reads: "Things rise. It used to be if
9 you repeated things three things, it becomes the truth."

10 MR. FRIEDMAN: I don't know what was on the e-mail
11 string before that.

12 THE COURT: There is nothing else on the exhibit, but
13 certainly there is nothing on the exhibit that says a word
14 about Chevron.

15 Now, as I say, some other piece of evidence, but at
16 least in that case there is nothing out of context, at least
17 not out of the context of the given exhibit.

18 MR. FRIEDMAN: Right. I guess that's kind of my
19 point, your Honor. I think if you go to the diaries -- I don't
20 want to belabor the point. The point is simply this. A lot of
21 what you have been presented with requires contextual
22 understanding. That's my point. And whether it's the diary
23 entries, the e-mails, what other e-mails were being exchanged
24 between Mr. Donziger and Mr. Fajardo at the time 1059 was being
25 exchanged, those are all things that are frankly hidden traps

DBQ8CHE3

Summation - Mr. Friedman

1 for the Court factually.

2 One thing that's apparent is that the Court has given
3 Chevron every opportunity to prove its legal entitlement to
4 relief, that is, entitlement to equitable relief under
5 applicable legal standards. And despite all the sensationalist
6 talk about the evidence in this case, that's the bottom line
7 for the Court. Has Chevron proven entitlement to some sort of
8 equitable relief under its two causes of action?

9 Not surprisingly, Mr. Mastro did not mention the law
10 once in his argument to the Court.

11 Viewed with fresh eyes, what Chevron is asking the
12 Court to do is truly extraordinary. It's asking the Court to
13 make factual findings about events that in large part took
14 place 3,000 miles away, in another language, in another
15 culture, in another legal system. And to do that, they are
16 essentially asking the Court to become expert in Ecuador
17 procedural and substantive law, at least expert enough to
18 answer questions such as: What ex parte contacts with judges
19 in Ecuador are appropriate? What ex parte contacts with
20 experts are appropriate? How is a lawyer's involvement with
21 preparing expert reports, how is that to be discussed and
22 presented in Ecuador? What proposed documents must be filed in
23 the record? How is a judge expected to act when he prepares
24 his final verdict? May a judge begin drafting a final judgment
25 before issuing an autos para sentencia?

DBQ8CHE3

Summation - Mr. Friedman

1 The list goes on and on, and I am not going to belabor
2 this point either, but what Chevron is asking the Court to do
3 is to become expert in those issues, and then look at the
4 facts, again, across these cultural language barriers, and make
5 factual decisions about what did and did not happen.

6 The fact is Mr. Mastro quoted Mr. Donziger -- again,
7 this was from a Crude outtake -- about we are doing things that
8 we would never do in the United States. And I think that's DX
9 4. That is the one where a sentence was taken out from the
10 middle of two other sentences. The truth is things are done
11 differently down there.

12 Chevron wants you to look at all those issues and more
13 of Ecuador procedural and substantive law, and then in essence
14 say, the Ecuador judicial system got it wrong. This is what
15 Ms. Littlepage was referencing as well from another
16 perspective. Essentially, what Chevron wants you to say is
17 that all of these issues that were raised before the Ecuadorian
18 courts were wrongly decided by the Ecuadorian courts.

19 THE COURT: I don't understand that to be the case at
20 all. So I am obviously missing something huge.

21 MR. FRIEDMAN: Let me give an example, your Honor.

22 Chevron is saying that the preparation of the Cabrera
23 report was improper under Ecuadorian law, and that it was
24 fraudulent, and various other things they have said in that
25 regard. Those issues about the Cabrera report were brought

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Summation - Mr. Friedman

1 both to the trial and the appellate courts. The trial court,
2 of course, threw out the Cabrera report. And the appellate
3 courts, none of the courts said, this is fraud, it's deserving
4 of reference to a prosecutor, anything of the kind.

5 THE COURT: But didn't the appellate court explicitly
6 say, we leave all of that to the court in New York, that's not
7 anything we are going to pass on?

8 MR. FRIEDMAN: I think what they said is, it's going
9 on in that context, and the parties are free to pursue -- I
10 don't know the exact language, but the parties are free to
11 pursue it there. But you would think, if this was so offensive
12 to Ecuadorian law, that there would have been a referral to the
13 prosecutor's office, if this was such a crime in Ecuador.

14 The same would be true of other sorts of issues.
15 There was a lot of talk in the Ecuadorian pleadings -- many of
16 them have been made exhibits now -- about allegations of
17 ghostwriting the judgment, of improprieties by Judge Zambrano.
18 Again, the appellate courts were not receptive to those
19 arguments. And if this Court is going to be receptive to those
20 arguments, it's going to put itself in conflict with the
21 Ecuador appellate courts. That's the point that I wanted to
22 make. That to get Chevron where -- there may be other ways to
23 get where it wants to go, but a big part of Chevron's argument
24 is what took place in Ecuador was improper, and the Ecuador
25 courts didn't catch it but you should. That's essentially what

DBQ8CHE3

Summation - Mr. Friedman

1 they are saying.

2 They want you to do that, without running afoul of the
3 Second Circuit's opinion in the Count Nine case, not running
4 afoul of comity concerns, which this Court has recognized in
5 prior opinions, and of course the Second Circuit has as well.

6 There are three main categories of wrongful conduct as
7 I see it. How the Cabrera report was prepared. How it was
8 talked about after it was prepared. And then, of course, the
9 allegation of bribing the judge.

10 The Cabrera report largely, primarily written by
11 Stratus. Chevron presented that evidence to the trial and
12 appellate courts. We have talked about that. But what I want
13 to point out to the Court, what harm was caused to Chevron by
14 that conduct? Because under our law, it's not enough to have
15 negligence or evil state of mind in the air, as Judge Cardozo
16 said. You need to actually tie it to causation.

17 There may have been a causation claim here when there
18 was a monetary claim, maybe. But now, with no claim for
19 monetary damages, the question is: What harm was caused to
20 Chevron by the way the Cabrera report was prepared? What harm
21 was caused that meets the standards for granting equitable
22 relief, that is, irreparable injury and inadequate remedies at
23 law?

24 And there is the talking about the Cabrera report.
25 The one point maybe I agreed with Mr. Mastro on is the

DBQ8CHE3

Summation - Mr. Friedman

1 significance of PX 1291. I remember in the trial when the
2 Court noted that exhibit as well. That's the to council memo.
3 Mr. Mastro has been quoting the first section of that memo that
4 talks about the traditional view under Ecuadorian law as Mr.
5 Donziger saw it. They have not quoted to the Court the next
6 section of the memo, in which he says, "The other perspective
7 is this." And essentially what he says is, given the way this
8 case has been litigated and the way things have evolved and the
9 way the Ecuadorian system works, there is a good argument to be
10 made that everything we did was proper.

11 I would commend the Court to that memo, because I
12 suggest to the Court that what it reflects is an American
13 lawyer trying to figure out what is proper, what isn't proper,
14 where the lines were, and what to do about it now.

15 Is Mr. Donziger at that point in time required to
16 say -- if that memo represents his state of mind at the time,
17 is he required to say, we did something wrong if there is a
18 good faith basis in the law and the facts to believe otherwise?

19 And the testimony has been uncontradicted. He sent
20 associates down to Ecuador to look into this. He had meetings
21 about this. He got information and reactions from everyone.
22 And of course you heard one reaction, if this comes out we are
23 all going to jail. There are other reactions in the record as
24 well. There is back and forth. There's lots of discussions.
25 And the question is, was he required in April, in light of that

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Summation - Mr. Friedman

1 state of mind, to just come out and say, OK, we screwed up, we
2 were wrong, there is no good faith basis for our position?

3 Now, maybe the Court will say yes. If that 1291
4 represents his state of mind, he is still required to come
5 forward at that time and say, yes, you have to not make those
6 arguments in the second half of the memo and only make the
7 arguments in the first half of the memo. But if that's true,
8 that simply leads to another question for this Court. What
9 specific statement after that time did he make that was
10 improper? Who relied on that statement? And what harm did
11 that reliance cause Chevron?

12 For a RICO case, as the Court is aware, the plaintiff
13 has to prove that someone relied on the misrepresentations and
14 that plaintiff was harmed as a result. And in a RICO case,
15 relying upon mail fraud or wire fraud violations, the plaintiff
16 also has to prove that its the pattern of mail or wire fraud
17 violations, not some other act, that caused the plaintiff's
18 injury to business or property. And I would suggest to the
19 Court, despite the wealth of evidence, there hasn't been any
20 evidence on those points that would support a mail or wire
21 fraud RICO violation.

22 That gets us to the allegation of bribing the judge,
23 your Honor. I think what I would like to remind the Court
24 about, which I think kind of epitomizes a lot of this case, and
25 particularly Mr. Guerra, is the moment that Mr. Guerra was on

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1 the stand, and after getting him to tell his story, Mr. Mastro
2 said, "And do you see the person in the courtroom? Do you see
3 Mr. Donziger here in the courtroom?" And this is on October
4 23, transcript page 923. And Mr. Guerra said, "Yes." And Mr.
5 Mastro says, "Can you point him out to us?" And the Court
6 said, "The usual way of doing that, Mr. Mastro, is to not point
7 at the witness." And Mr. Guerra said, "Yes, I see him. He
8 just smiled. He is behind the lady in the red." And on that
9 day, Ms. Littlepage was dressed in red sitting at that seat,
10 and Mr. Booth is sitting right where he was, and Mr. Donziger
11 was sitting next to her. And the Court said, "I'm sorry. Is
12 that translation accurate, that he is behind the lady in the
13 red?" And the translator confirmed that's where he sat.

14 That demonstrated two things at once I would suggest
15 to the Court. One, that Mr. Guerra didn't know or remember Mr.
16 Donziger very well. More importantly, he was willing to say
17 whatever he believed Mr. Mastro wanted him to say.

18 THE COURT: I remember the incident vividly, and the
19 problem is that Mr. Mastro certainly didn't point to Mr. Booth.
20 You can make out of that whatever you want to make. They
21 concededly had the meeting. They both agreed they had the
22 meeting. So the question is what was said at that meeting. So
23 the fact that he pointed or indicated Mr. Booth.

24 MR. MASTRO: Mr. Donziger was seated back from the
25 table.

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1 THE COURT: The bottom line of that is we were all
2 here, and it doesn't prove much of anything, except that he
3 didn't recognize Mr. Donziger.

4 MR. FRIEDMAN: I guess it gets down to whether anybody
5 who heard Mr. Guerra would base any important decision in their
6 life, or stake anything important in their own lives, on him
7 being correct about his "bribing the judge" story. That's the
8 bottom line. We can all dance around that issue. Arguments
9 can be made. Arguments have been made for his credibility. I
10 will just leave it at that.

11 But to get where Chevron wants you to go, you not only
12 have to publicly state that Mr. Guerra is a credible witness,
13 you also have to find certain things about mail and wire fraud
14 and the legal elements of this case.

15 I didn't want you to think I came without a PowerPoint
16 like everybody else.

17 Chevron has to prove that someone relied on
18 misrepresentations and that the plaintiff Chevron was harmed as
19 a result.

20 They have to prove that the pattern of mail or wire
21 fraud violations, not some other act, caused their injury.

22 We had a lot of discussion about the extortion issue,
23 your Honor. Our position -- I think it's borne out by the case
24 law -- is to find extortion, there has to be proof that the
25 defendant had no claim of right to the property and no

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1 reasonable belief in the right to the property. Of course, in
2 this case, that would be the affected people, the plaintiffs in
3 Ecuador, had no claim of right to the property and no
4 reasonable belief in the right to the property.

5 Chevron has presented zero evidence on that point.
6 None.

7 You have to find extraterritorial application for
8 RICO. And, of course, you have got the guidance of *Morrison v.*
9 *National Australia Bank*. When a statute gives no clear
10 indication of an extraterritorial application, it has none.
11 And *Morrison* was a securities case. But the statutory language
12 of *Morrison*, I would commend to the Court if you haven't
13 studied it already, RICO has no clear indication of
14 extraterritorial application.

15 You have to find that the New York State common law
16 fraud law applies to allegations of bribing a judge in Ecuador.

17 And you have to find RICO provides a right to
18 equitable relief to private parties, even though the Second
19 Circuit has aligned itself in dicta with courts that say no.

20 THE COURT: And made abundantly clear that the
21 question is open in this circuit.

22 MR. FRIEDMAN: It is open in this circuit, there is no
23 question.

24 THE COURT: You know, a moment ago you cited the
25 *Bridge* case in the Supreme Court for the proposition that, in

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1 order to prove mail fraud, you have to prove reliance. In
2 fact, it holds exactly the opposite. I just opened it up on
3 Westlaw because I was so surprised to hear you say it.

4 MR. FRIEDMAN: No, your Honor. I think what *Bridge*
5 says, and I don't have a copy of it with me, is that someone
6 relied on misrepresentations. I got that out of my handy RICO
7 for dummies book so maybe they got it wrong.

8 Is that not true, must prove someone relied on the
9 misrepresentations?

10 THE COURT: My understanding of the case.

11 MR. FRIEDMAN: I apologize if I got that wrong, and I
12 will address it in our post-trial brief.

13 THE COURT: I would urge you to do so. Maybe I got it
14 wrong.

15 MR. FRIEDMAN: I took that out of the RICO book
16 published by the ABA that was citing *Bridge v. Phoenix* for that
17 proposition.

18 THE COURT: I think one of us is mistaken. We will
19 find out.

20 I will quote you from the opinion at page 649. "It
21 thus seems plain, and indeed petitioners do not dispute, that
22 no showing of reliance is required to establish that a person
23 has violated Section 1962(c) by conducting the affairs of an
24 enterprise through a pattern of racketeering activity
25 consisting of acts of mail fraud."

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Summation - Mr. Friedman

1 MR. FRIEDMAN: I apologize for not going to the
2 source, your Honor. Actually, I apologize if I got that wrong.

3 THE COURT: Whatever. Let's just go on. It will be
4 briefed.

5 MR. FRIEDMAN: We talked about providing equitable
6 relief for a private party.

7 Then you have to find the likelihood of irreparable
8 harm and if the remedies available at law are inadequate.

9 Here, there are adequate remedies at law. And I would
10 point out that it's Chevron's burden to prove the likelihood of
11 irreparable harm and that the remedies available at law are
12 inadequate to address that, including monetary relief.

13 There are procedures in Ecuador to investigate,
14 evaluate, and remedy fraud. Some of those are going on right
15 now. We heard about the Guerra investigation that's going on
16 right now, the criminal investigation that involves statements
17 by Mr. Zambrano, etc., the forensic investigation. That's all
18 going on even as we speak.

19 If anyone tries to enforce this judgment in a foreign
20 country, each country where that judgment might be enforced has
21 its own legal process to prevent irreparable harm. And Chevron
22 had an adequate remedy in money damages that it elected to drop
23 before this case got to trial.

24 THE COURT: What was that exactly?

25 MR. FRIEDMAN: They had their monetary claims against

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Summation - Mr. Friedman

1 the plaintiffs for RICO. I think it was the amount of the
2 judgment times three. No?

3 THE COURT: No. It was a sub one billion dollar
4 number.

5 MR. FRIEDMAN: They backed off and then they had a
6 different number which was for the costs.

7 THE COURT: Let's suppose for the sake of argument you
8 were right, and I think you are not, but let's suppose you
9 were. Suppose they could have gotten a dollar-for-dollar
10 judgment. 9-1/2 billion, 18-1/2 billion, whatever. Against
11 whom? Who is going to pay it? Mr. Donziger?

12 MR. FRIEDMAN: I don't think he has got that kind of
13 money.

14 THE COURT: This is a reasonable point, isn't it?
15 Mr. Piaguaje?

16 MR. FRIEDMAN: I guess it depends on what we are
17 talking about. If we are talking about the costs of
18 discovering the Cabrera fraud, as they have put it, and that
19 they put in their pretrial, they would have an offset, I
20 suppose, against any amounts recovered by the judgment.

21 The bottom line, your Honor, is that there are plenty
22 of other -- well, to find for Chevron's favor on this point,
23 what you have to do is pass judgment on the Ecuadorian court
24 system and say it cannot provide an adequate remedy no matter
25 what, based on the evidence before you, that the other

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1 countries where enforcement actions might be initiated are
2 inadequate to handle these matters, and that only courts in
3 this country are competent to judge those sort of matters.

4 THE COURT: The argument would be a whole lot stronger
5 from your point of view if all of the relevant parties were
6 prepared to agree that there will be one judgment enforcement
7 proceeding and winner take all. But that's not the evidence.

8 MR. FRIEDMAN: It's hard to imagine they would ever
9 agree on that, your Honor. Right, that would be a sensible way
10 to resolve the issue.

11 I would say, your Honor, and I am sure the Court
12 appreciates this, the case is bigger than just Mr. Donziger or
13 even the 30,000 people in Ecuador who may be affected by the
14 Court's ruling. The Court does not have the luxury of ruling
15 on this matter without regard to the consequences to future
16 cases and future parties since we are in a common law
17 jurisdiction.

18 Ultimately, as a practical matter, what Chevron is
19 asking you to do is to extend the reach of common law tort law,
20 at least as to fraud and RICO, to the far reaches of the globe.
21 To borrow a phrase from the Supreme Court in *Morrison*, in
22 essence, what they are asking you to do is to create a climate
23 where this would become a Shangri-La for plaintiffs' lawyers,
24 where people like Ms. Littlepage and myself could sue large
25 corporations in the Southern District of New York for RICO

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1 violations. If we get false statements sent through the mails
2 and bribing of a foreign official, suddenly we have got an
3 argument to be in the Southern District and argue for RICO and
4 common law fraud violations.

5 Let me conclude in this way, your Honor. It is a
6 complicated case, obviously, legally and factually. And that
7 complexity --

8 THE COURT: I had noticed that.

9 MR. FRIEDMAN: I figured you had.

10 The legal compass that the Court has, the principles
11 that it has to guide itself through these facts are important
12 beyond this case. Your decision will be read by people around
13 the world, and they will be looking for something more than
14 whether somebody ghostwrote an expert report, or even whether
15 somebody bribed a judge in Ecuador. They will also be looking
16 to see if American courts will follow their own rules of law.
17 They will also be looking to see whether there is going to be
18 special exceptions, special rules for large American
19 corporations.

20 How would those rules that are in play here in this
21 case be applied if Chevron had won the trial in Ecuador -- I am
22 sure the Court has thought about that -- and the Ecuadorians
23 were here with evidence they said showed that Chevron had
24 falsified an expert report and bribed a judge? Would a U.S.
25 district court judge apply New York common law to that

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Summation - Mr. Friedman

1 situation? Would a U.S. district court judge find that RICO
2 should apply to that situation? That, I think, is the ultimate
3 question in this case.

4 Thank you for giving me the time to talk, your Honor.
5 I appreciate that. It's been said that all great truths are
6 paradoxes, and one of the paradoxes for me in this case,
7 because I don't think I have ever been as unprepared and
8 disorganized in a courtroom as I have over the last six
9 weeks --

10 THE COURT: Well, you have concealed it very well.

11 MR. FRIEDMAN: Well, thank you.

12 I don't think I have ever performed as poorly as a
13 lawyer, and I don't think I have ever been as proud of a case I
14 have done as this case. It's been a privilege to be in this
15 courtroom representing Mr. Donziger. What he has accomplished
16 by legitimate, if noisy, boisterous, rude, unconventional ways
17 has caused people around the world to look with fresh eyes at
18 the way our corporations treat the third world, that's an
19 important thing. It's an accomplishment that I am proud to be
20 a part of.

21 Thank you for your time.

22 THE COURT: Mr. Gomez.

23 I trust that a half hour will be adequate, if that?

24 MR. GOMEZ: Oh, yes, your Honor. After what everyone
25 has said, I am not sure there is really much more to say.

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Summation - Mr. Gomez

1 *La sabiduria nos llega cuando ya no sirve para nada.*

2 Perhaps not a lot of people in this Court understood
3 what I just said. And perhaps those who didn't understand what
4 I have just said now have, for one brief moment, a sense of
5 what my clients felt like to participate in this.

6 Translated into English, what I have just said means,
7 wisdom comes to us when it is no longer useful. Those are the
8 words of Gabriel Garcia Marquez, not mine. And he means to
9 say, I think, wisdom often comes too late.

10 All the parties in this case could reflect seriously
11 on whether wisdom has come too late for them.

12 All the parties in this case could benefit from
13 questioning the wisdom of their choices. The wisdom of the
14 merger with Texaco for example. The wisdom of the retention of
15 Stratus Consulting. The wisdom of the Lago Agrio plaintiffs
16 not suing every member of the consortium.

17 Whether these decisions were wise or not are open
18 questions. And, like the parties, this Court may also engage
19 in such reflection as it decides this case. How wise or just
20 is it to exercise jurisdiction over the Ecuadorian defendants?
21 How wise or just is it to judge the impartiality of the
22 Ecuadorian court system? How wise or just is it to rule on
23 questions of Ecuadorian law?

24 On the issue of personal jurisdiction, specific facts
25 regarding the Ecuadorian defendants' contacts with New York

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Summation - Mr. Gomez

1 were not disputed by the evidence adduced at trial. There was
2 no evidence presented at trial that Camacho or Piaguaje are
3 doing business continuously or systematically in New York.
4 Camacho and Piaguaje maintain that before this case, they have
5 never travelled to New York, have never had offices, bank
6 accounts, employees in New York. They have never transacted or
7 engaged in any business in New York. They never earned any
8 income, revenue from New York, or paid taxes in the state.
9 They never had any regular contact or communication with
10 residents of New York.

11 Chevron did not present any evidence at trial that
12 seriously disputes these facts.

13 THE COURT: I think perhaps we were at different
14 trials, counselor.

15 MR. GOMEZ: There was no evidence presented at trial
16 that demonstrates sufficient contacts with the state of New
17 York, and certainly no evidence that the state of New York has
18 any material interest, any dispute between Chevron, Camacho or
19 Piaguaje.

20 On the issue of judging the independence and
21 impartiality of the Ecuadorian legal system, Chevron has
22 presented experts that opined on the independence and
23 impartiality of Ecuadorian courts and its judges. But there
24 was no direct evidence at trial to prove that any of the
25 frailties that might exist in Ecuador's judicial system

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Summation - Mr. Gomez

1 actually affected the Lago Agrio litigation. Vladimiro Alvarez
2 Grau, one of Chevron's experts, conceded on the stand that not
3 all of Ecuador's judges are corrupt, and that not all of
4 Ecuador's judges are subject to manipulation or influence by
5 political forces.

6 There is no reliable evidence of any kind that former
7 Judge Nicolas Zambrano was influenced in any way by the
8 Republic of Ecuador or unable to issue an impartial decision as
9 a result of political influence.

10 On this record, defendants Camacho and Piaguaje would
11 ask, what is the legal basis and wisdom of judging the
12 independence and impartiality of the Ecuadorian legal system in
13 this case?

14 On the issue of deciding questions of Ecuadorian law,
15 there are numerous questions posed by the parties. 12 by
16 Chevron. 16 by the defendants. Among them are questions that
17 go to the heart of the misconduct alleged by Chevron in Ecuador
18 and that are central to deciding whether defendants or their
19 representatives did anything wrong. What kinds of contacts
20 with experts are permitted under Ecuadorian law? What kinds of
21 contacts with judges are permitted under Ecuadorian law? What
22 information may an Ecuadorian judge rely upon to issue his
23 ruling? May a judge in Ecuador consider arguments or other
24 information received outside the record?

25 These are just a few of the critical questions of

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Summation - Mr. Gomez

1 Ecuadorian law that this Court may be required to answer. And
2 they are not questions of substantive Ecuadorian law.

3 Primarily, they are mostly questions of Ecuadorian procedural
4 law. And if this Court chooses to answer them, it will do so
5 without the benefit of authorized translations of Ecuadorian
6 legal codes, without the benefit of testimony by the proffered
7 Ecuadorian law experts, and probably without the aid of an
8 interpreter or translator to assist the Court with any legal
9 research the Court may need to undertake during its
10 deliberations.

11 THE COURT: Weren't many of the Ecuadorian law experts
12 deposed and isn't that testimony all before me, or much of it?

13 MR. GOMEZ: Yes, it is, your Honor.

14 THE COURT: You may go on.

15 MR. GOMEZ: And if this Court in New York is going to
16 exercise jurisdiction over Camacho and Piaguaaje and decide
17 whether the Ecuadorian court acted independently and
18 impartially and applied Ecuadorian procedural law correctly in
19 the Lago Agrio case, what is the difference there between doing
20 that and acting as the appellate court of the Sucumbios court?
21 But this court must engage in that kind of deliberation to
22 decide whether Chevron had a full and fair opportunity to try
23 its case in Ecuador. And that really creates a very
24 complicated situation, with issues of international comity
25 squarely before this court.

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1 In light of all of these circumstances, defendants
2 Camacho and Piaguaje submit to this Court that the assertion of
3 jurisdiction over them does not comport with constitutional due
4 process or traditional notions of fair play and substantial
5 justice. Defendants Camacho and Piaguaje, having to defend in
6 this court, were not able to present as full and fair a defense
7 in this case as they could have in Ecuador. Defendants were
8 hampered in the presentation of their defense by the need to
9 translate documents for these proceedings. They were hampered
10 by the need to have interpreters present for the preparation of
11 witnesses. They were hampered by the need to secure visas for
12 witnesses to appear at these proceedings. They were hampered
13 by their need for witnesses to travel a great distance to be
14 here.

15 These hurdles are the result of the exercise of
16 jurisdiction over foreign parties and such matters should be
17 factored into a court's decision to exercise jurisdiction,
18 because it is so much more difficult for Camacho and Piaguaje
19 to litigate here what could have been litigated in Ecuador.

20 THE COURT: This actually was their chosen forum in
21 the first place, wasn't it?

22 MR. GOMEZ: Yes, it was, your Honor.

23 And it is incredibly hard to explain to my clients how
24 the court that they initially chose said they were in the wrong
25 court and how they can now be required to come back to New York

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Summation - Mr. Gomez

1 to litigate the case.

2 Defendants were also hampered by the inability to
3 compel the attendance of witnesses from Ecuador. This Court
4 has never heard from key witnesses whose participation is
5 central to this case. Witnesses who, for whatever reason, did
6 not make themselves available, did not volunteer to come here,
7 and could not be compelled to appear to give testimony on
8 behalf of my clients, Hugo and Javier.

9 Even defendants' attorneys in Ecuador, who have
10 essentially boycotted these proceedings, their attendance could
11 not be compelled to offer evidence that I believe would have
12 aided my clients.

13 I know it is difficult, in view of the mountain of
14 evidence that Chevron has presented to this Court, to not
15 assume that every witness in Ecuador who did not testify would
16 only have presented evidence unfavorable to the defendants.
17 And it is difficult to not assume that every document in
18 Ecuador that was not produced would only have presented
19 evidence unfavorable to my clients.

20 My clients, Hugo Camacho, Colonos in Ecuador, and
21 Javier Piaguaje, an indigenous Ecuadorian of the Siekopai, have
22 appeared in this case under protest, and the record is clear
23 that they maintain this Court does not have jurisdiction over
24 them now.

25 The record is also clear they believe that the

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Summation - Mr. Gomez

1 exercise of jurisdiction over them is a sign of injustice.
2 Whether they are right or wrong under U.S. law ultimately
3 remains to be seen. Whether it is wise or just for U.S. courts
4 to exercise jurisdiction over them is a question that will be
5 answered by this case. And in deciding this question, my
6 clients, the Ecuadorian defendants, hope that wisdom will not
7 come too late for the courts that will be asked to answer this
8 question yes or no.

9 Thank you, your Honor, for the opportunity to be
10 before you and your patience.

11 THE COURT: Thank you, Mr. Gomez.

12 All right. Mr. Mastro, I can give you ten minutes now
13 or we can go over till after lunch.

14 MR. MASTRO: I wish I could say I could finish in ten
15 minutes, but perhaps what makes the most sense is for me to
16 consolidate the many points I would otherwise make and try and
17 be as brief as possible after lunch.

18 THE COURT: We will resume at 10 past 2. I hope you
19 will in the interim get the exhibit issues, if they are not
20 already resolved, resolved, because we will close this record
21 today.

22 MR. MASTRO: Thank you very much, your Honor.

23 (Luncheon recess)
24
25

DBQLCHE4

Rebuttal - Mr. Mastro

1 AFTERNOON SESSION

2 2:15 p.m.

3 THE COURT: Good afternoon, folks.

4 Mr. Mastro.

5 MR. MASTRO: Thank you, your Honor.

6 Your Honor, I want to talk a little bit more about the
7 evidence because it seems we heard scant little about that in
8 defendants' closing. Ms. Littlepage said the time for
9 inference and innuendo is over. Where's the proof?

10 I think she got her answer from Mr. Gomez who
11 complained that there's "a mountain of evidence" in this case
12 and he had it right. And we heard from Mr. Friedman and he
13 complained about the Crude outtakes. The Crude outtakes, which
14 by the way, your Honor, now have been agreed upon by all
15 parties, there's no cuts in any sequence, all in without
16 objection, all of them absolutely accurate. And I can tell you
17 to a certainty there is no Crude outtake that says what Steven
18 Donziger wrote is his philosophy, if you repeat a lie a
19 thousand times it becomes the truth.

20 Now, your Honor, I have to address some of the
21 misstatements that were made during defendants' closings. And
22 it's understandable the pressure of a trial, a big record, why
23 some misstatements would be made, but let's clarify some of
24 them because Ms. Littlepage tried mightily to push out a
25 timeline based on speculation and, yes, inference and innuendo

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Rebuttal - Mr. Mastro

1 that just doesn't hold up, a timeline going back four plus
2 years and witnesses' faded memories that is anything but
3 certain and, in fact, based on express misstatements by
4 Ms. Littlepage in doing that timeline.

5 Let me explain, your Honor. In fact, in
6 September 2009, September 4, 2009, in fact, Judge Zambrano was
7 already issuing orders on the Lago Agrio Chevron case as Judge
8 Nunez was seeking to recuse himself, didn't officially take
9 over until October, but as you can see, your Honor,
10 September 4, Zambrano is issuing orders in the Chevron case.

11 What was the actual testimony by both the Chevron
12 witnesses and Mr. Guerra about the potential earliest point in
13 the timeline? Mr. Callejas in his declaration, DX99,
14 paragraph 2, he says -- go to the next slide please, Randall --
15 he said that in the summer of 2009, Mr. Racines, Dr. Racines
16 from his office, first had an encounter with Guerra in this
17 regard.

18 And what did Guerra say? Let's go to Guerra's
19 testimony. What Guerra said was that when he was planning that
20 first connected with Mr. Fajardo about cutting the deal to
21 steer the case in the direction of the LAPs for a thousand
22 dollars a month and Judge Zambrano's instruction that that
23 occurred -- and I'll give your Honor the pages, page 919 of the
24 transcript, lines 6 through 11 -- he said that that encounter
25 occurred with Fajardo when they cut the deal, September,

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Rebuttal - Mr. Mastro

1 October, or November of 2009. So it could have been as early
2 as September and that would make perfect sense. And then
3 Mr. Fajardo said he cut the deal and then later met with
4 Mr. Donziger.

5 Now, Ms. Littlepage -- and that, your Honor, is
6 page 921 of the transcript, lines 6 through 20. He says he met
7 later with Mr. Donziger. Deal is done, but he's meeting with
8 Donziger so Donziger can see him face to face.

9 And, your Honor, what in fact happens here is that
10 this could have been as early as October or November. And
11 Ms. Littlepage put up a slide saying to you Donziger wasn't in
12 Ecuador in November or December. In fact, this is
13 Exhibit 1509, Donziger, page 3, Donziger was there from
14 October 6 through 9, 2009. Donziger was there from November 10
15 through November 14. With faded memories, the time sequence is
16 perfectly logical.

17 Now, your Honor, I have to come to something else that
18 was said by Ms. Littlepage, and this one couldn't have just
19 been a mistake. She put before you the September 5, 2010 email
20 from Alberto Guerra to Steven Donziger, the one where
21 Mr. Guerra says, "I will support the matter of Pablo Fajardo so
22 it will come out soon and well." Let's put that on the screen,
23 please, Randall. Plaintiff's Exhibit 1745.

24 Now, your Honor asked me is this a little early in the
25 time sequence for the later judgment. It's not early in the

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Rebuttal - Mr. Mastro

1 time sequence, your Honor, to resume the Guerra relationship to
2 steer the case in the plaintiffs' favor because everybody knew
3 by this point in time, September 5, 2010, that Judge Zambrano
4 was going to be resuming on the case. Chevron had made a
5 recusal motion of Judge Ordonez in August. Guess who decided
6 that motion? Judge Zambrano. So everyone knew the case was
7 headed back to Zambrano. And this is Guerra saying that he'll
8 support the matter of Pablo Fajardo, as he had done during
9 Zambrano's first tenure.

10 Now, your Honor, Ms. Littlepage again did something
11 she did at the trial, so this one couldn't have been a mistake.
12 She cited one of Guerra's conversations that had been
13 previously recorded going back to mid-2012. It's DX1362. And
14 she brought up, your Honor, same quote she did at the trial,
15 she says, oh, he didn't mean, Guerra didn't mean the trial.
16 She cited your Honor to something that says the truth is no but
17 it's no unintelligible.

18 Now, your Honor will recall that you read the rest of
19 the transcripts starting at the bottom of the page and then
20 onto the next page, page 31 of the transcripts, page 32 of the
21 exhibit, starting with, quote, Nicolas knew, we knew that we
22 will allow the procedure and the recusal will be accepted at
23 the end.

24 So then -- please go down the page, Randall, go to the
25 top of the page. Thank you. Good -- so then I mean beforehand

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Rebuttal - Mr. Mastro

1 we knew that obviously that Nicolas will return to be there,
2 right? I mean he will return to and to and to speed up the
3 procedure. Well, it must have been that because, because I
4 have not had any other business with Pablo Fajardo. The issue
5 of Pablo Fajardo turns out quickly and well was the trial.

6 Now, your Honor, I have to come to something that
7 Mr. Friedman said. We can take that off the screen, Randall.
8 Please put up Exhibit 1291, pages 2 and 3. Mr. Friedman
9 pointed out at pages 1 and 2 -- Randall, sorry -- Mr. Friedman
10 pointed out that Mr. Donziger's April 2010 letter to fellow
11 counsel, the one that he never ended up actually apparently
12 sending to any of them, but in which he's trying to explain
13 away the burgeoning Stratus ghostwriting scandal. He writes
14 that under the traditional Ecuadorian law perspective, this
15 would be problematic and improper. But he also writes, as
16 Mr. Friedman points out, that the other perspective is that
17 given the customs and practices of the Aguinda case, nothing
18 improper happened.

19 Now, your Honor, in that same exchange, he notes that
20 it was not lost on us that our local counsel seemed concerned
21 about how the information would land in Ecuador and what impact
22 it would have on the case and to them personally.

23 And when he speaks, your Honor, of the other
24 perspective is that given the customs and practices of the
25 Aguinda case, nothing improper happened. Is he saying there's

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1 a special rule for this case, there's a special rule for a case
2 where we bribe and blackmail and threaten and intimidate
3 judges? Your Honor, there is nothing, nothing in the record in
4 this case or in the Aguinda case that suggests there was ever
5 any deviation from traditional Ecuadorian law as it applied to
6 this case.

7 And how do we know? How do we know what local
8 counsel, on who Mr. Donziger says he relied, felt at the time?
9 We know from Mr. Prieto's email just a couple weeks before this
10 that they may all go to jail. And your Honor asked me about
11 this -- didn't Mr. Donziger previously explain what that meant,
12 Mr. Prieto's email about all the Ecuadorian lawyers going to
13 jail. And, your Honor, it's at page 3381 of Mr. Donziger's
14 deposition, lines 14 through 20, which have been designated in
15 this case.

16 So Mr. Prieto was concerned that all of the local
17 Ecuadorian lawyers for the Lago Agrio plaintiffs might end up
18 in jail because of the role they played in drafting the Cabrera
19 report, correct?

20 Mr. Donziger, in a more candid moment than he gave on
21 this stand, the role they played related to Stratus,
22 Mr. Cabrera, yes.

23 Now, your Honor, Ms. Littlepage tried to poke holes in
24 the ample evidence of judgment ghostwriting fraud here, unable
25 to have any substantive response, she started with our six

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1 experts who showed meticulously how pieces of the internal work
2 product of the plaintiffs, LAPs, show up word for word in the
3 judgment and that those same documents are nowhere to be found
4 in the Lago Agrio record itself.

5 She has no response on the merits. They have no
6 expert of their own. Their own people don't explain how that
7 could have happened, the ones who presumably should know, here
8 or in Ecuador. She says should have had another expert to give
9 another opinion. Your Honor, it's ludicrous.

10 She then tries to poke holes in individual pieces of
11 evidence. She says of the fusion memo, well, exhibits to the
12 fusion memo are in the record. We never said otherwise. It's
13 the memo itself showing a draft memo from their internal work
14 product that shows up word for word in 150 word strings.

15 And, your Honor, she then goes on to say, well, what
16 they say are ghostwriting mistakes, Mr. Zambrano himself made
17 mistakes as to causation in the judgment and then he made those
18 mistakes on the stand. So he must be telling the truth because
19 it's the same mistake in the judgment itself. Mr. Zambrano
20 made the mistake because he had no idea what the standard of
21 causation was or what his own judgment said on causation.

22 The reason that mistake is in the judgment is because
23 the Lago Agrio plaintiffs' team ghostwrote it themselves. It's
24 called the Moodie's memo. It deals with California and
25 Australian law. That's Exhibit 1101. It misstates, as

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1 Professors Green and Spigelman explained, the law of causation
2 and the exact same mistakes, exact same language shows up in
3 the judgment itself because it was ghostwritten by the
4 plaintiffs out of their own Moodie's memo written by an intern
5 who didn't understand the true legal standards.

6 And, your Honor, Ms. Littlepage says where are the
7 documents from Mr. Donziger around the time of the judgment
8 showing he was working on the ghostwriting of the judgment?
9 Well, your Honor will recall exactly what we were all doing
10 back in 2010. Mr. Donziger was the subject of a 1782. He
11 wasn't complying with the Court's orders. He waived privilege.
12 He still didn't produce his documents. And then by
13 October 2010, there were orders about his hard drive having to
14 be searched.

15 And, in fact, off of that hard drive we were able to
16 get internal documents from the LAPs team that showed the
17 judgment had been ghostwritten, eight separate documents that
18 showed the judgment had been ghostwritten. And, of course,
19 after that point in time Mr. Donziger is no longer using his
20 direct email. He's using those dummy email accounts and those
21 password protected email accounts that he used over and over
22 again -- lagarto3 and gringograndote and those kind of
23 accounts -- to avoid being caught. But even up to
24 October 2010, we were able to find eight separate documents
25 that show up in substantial parts, word-for-word in the

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1 judgment itself.

2 And, finally, Ms. Littlepage said to your Honor we can
3 explain a lot about what went on in the judgment from a case
4 Mayudo(phonetic) v. Petroecuador that they showed to Judge
5 Zambrano and they said that's where he got the French law and
6 the Colombian law and the Argentinian law, out of that case, no
7 great mystery there. Of course, Judge Zambrano couldn't even
8 say who the parties to the case were when it was presented to
9 him. He couldn't even explain what the case was about when he
10 was sitting there trying to read it.

11 But, your Honor, guess where the case really comes
12 from. Please go to Plaintiff's Exhibit 1141. The case comes
13 from Pablo Fajardo who in June 2009 sends it to his internal
14 team, including Steven Donziger. He sends this case and he
15 says that the arguments are very interesting. I think they
16 serve us well for our alagato and ... The "..." your Honor, is
17 the judgment and they were already planning then to do the
18 ghostwriting.

19 And you know how we know the "..." is that? Because
20 in a less circumspect moment days before, Pablo Fajardo writes
21 to Steven Donziger -- this is Exhibit 1137 -- about an intern
22 now working in their office, Brian Parker, and he's been given
23 a research assignment for our legal memorandum and the judgment
24 but without him knowing what he is doing. They were working,
25 already planning. And this case they came up with, they used

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1 it to ghostwrite the judgment.

2 And by the way, your Honor, that doesn't explain how
3 U.S. law, British law, Australian law, other French law show up
4 in the judgment. This case is about a discrete causation
5 issue. It doesn't explain the ghostwriting at all. In fact,
6 the contemporaneous documentation shows it proves the
7 ghostwriting because it was Fajardo who came up with it.

8 THE COURT: And who is the judge in Ecuador on June 5,
9 2009?

10 MR. MASTRO: It was Judge Nunez, your Honor.

11 THE COURT: And is this before or after the recusal is
12 made against him, the motion?

13 MR. MASTRO: This is before. And, your Honor, we will
14 come to this and explain it more in our posttrial briefs, but
15 the LAP team already had a well-established relationship with
16 Judge Nunez. And when the bribe scandal occurs and Patricio
17 Garcia is the political coordinator for the Correa
18 administration, he makes the specific bribe solicitation and
19 Nunez has private meetings with these folks posing as
20 contractors, Chevron knowing nothing about it, Garcia makes
21 clear that the bribe solicitation is 1 million for the judge,
22 Nunez, 1 million for the presidency, Correa's office, and
23 1 million for the Lago Agrio plaintiffs. That's what's on
24 those tapes.

25 And Donziger's own special counsel that he hired

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1 concluded that Chevron knew nothing about that, Aton Goldman,
2 who your Honor may remember was a former AUSA here in the
3 Southern District. That's all in the record, your Honor, and
4 that is in fact in the book that we presented to your Honor.

5 But coming back to this, your Honor, Ms. Littlepage
6 also made an extraordinary statement. She made an
7 extraordinary statement, something we were all here yesterday
8 to witness, Mr. Lynch's ultimately very limited testimony. And
9 she I think said in her closing that Mr. Lynch had said that
10 the judgment, the draft judgment, was found on the old computer
11 in Zambrano's office. We all know no such thing was said.

12 In fact, Mr. Lynch didn't have access to any of those
13 hard drives. Mr. Lynch simply was repeating what the Tarco
14 declaration said which is that there was a file name in which a
15 document similar but not identical to the judgment called
16 providencias.docx was purportedly put on the old computer on a
17 date of October 2010. Of course, what Lynch went on to say
18 was --

19 THE COURT: Is that something that came into evidence
20 or not?

21 MR. MASTRO: Your Honor, only that the following
22 question and answer:

23 "Can you tell when the providencias.docx was created
24 based on the Tarco declaration?"

25 He didn't say he could. He said only that a file of

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1 that name was purportedly put on the computer on October 2010.

2 Yet she made that representation to the Court so I
3 have to clean it up because Mr. Lynch actually testified what
4 the Tarco declaration says is completely inconsistent with
5 Zambrano's testimony, Zambrano having said he is sure he only
6 worked on the new computer. That's 1679, line 5, to 1680, line
7 19. And then in fact his old computer was taken out for
8 maintenance while he was working on the judgment.

9 Your Honor, I just didn't want to leave the record at
10 all unclear on this point. Tarco declaration, Zambrano
11 testimony, collusion between the ROE and the plaintiffs' team
12 imploded on them. And Zambrano lied, can't put any credence on
13 the Tarco declaration. They wouldn't even bring him here it
14 imploded so badly on them and they tried so hard to keep it out
15 of evidence.

16 THE COURT: Well, and indeed, for the most part
17 succeeded at that. Am I right?

18 MR. MASTRO: And that's absolutely right, your Honor,
19 while we were prepared to show they were both liars. But in
20 any event, we certainly proved that Zambrano was a liar.
21 Mr. Tarco never showed up here.

22 Now, your Honor, the next point that I wanted to cover
23 briefly was that Ms. Littlepage said nothing about unclean
24 hands except one reference and I have to correct it. So with
25 all the talk about clean hands at the beginning of this trial,

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1 not a mention of it in closings by any of the defendants'
2 counsel except in one respect. She said the fact that
3 Mr. Callejas and his team did not report overtures that they
4 received was unclean hands compared to Mr. Donziger and
5 Mr. Fajardo not reporting the late 2010 bribery solicitation of
6 Mr. Guerra, concrete as it was.

7 And as your Honor often tells us in this case, that's
8 like comparing a cartful of apples to a truckload of oranges
9 because your Honor will recall --

10 THE COURT: I hope I haven't told you that often.
11 Once at least I know.

12 MR. MASTRO: Fortunately not that often to me, your
13 Honor.

14 THE COURT: I should do a better simile, you know.

15 MR. MASTRO: But your Honor will recall why there's no
16 basis for comparing Chevron's situation to the Lago Agrio
17 plaintiffs' team for the following reasons.

18 Mr. Callejas testified, back in 2009, these were vague
19 overtures, that there were often miracle cures that people
20 would come to them about. He didn't feel that they had enough
21 of a basis to go to authorities back in 2009, but they were
22 concerned about it enough, the legal team, to contemporaneously
23 document that there had been such contact so they can never be
24 accused of having submitted to them.

25 2010, different time, clear, concrete overture by

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1 Guerra. And keep in mind, Guerra is making overtures to both
2 sides in 2009 and 2010. He's on their payroll in 2009, a
3 thousand dollars a month to steer the case in their direction,
4 the LAPs.

5 We're in 2010. What did Mr. Callejas tell this Court?
6 What distinguishes Chevron's situation from theirs?

7 Mr. Callejas explained there were no authorities to go to. The
8 authorities were in bed with the Lago Agrio plaintiffs' team
9 and prosecuting two Chevron attorneys at the time on bogus
10 criminal charges ginned up by Mr. Donziger and his team to put
11 political pressure on Chevron. Who were they supposed to go to
12 and not face criminal prosecution themselves?

13 Mr. Donziger and Mr. Fajardo, they didn't need to go
14 to the authorities because they cut their deal. They knew they
15 had the judge in their pocket, and they were ghostwriting the
16 judgment. Cartful of apples, truckload of oranges.

17 THE COURT: Well, there's certainly some evidence in
18 the record as I remember it that in the period -- and maybe
19 because Zambrano was on this case twice, I may misremember
20 which period it is, but I think it was in the second period
21 that the defendants in this case viewed the prospect of
22 Zambrano becoming the judge in the case at least initially with
23 great alarm and they compared it to having Zambrano decide a
24 case in which Chevron was a party to putting Hitler and Bush
25 together -- not my comparison, something from one of their

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1 documents.

2 MR. MASTRO: And, your Honor, there is email traffic
3 about using words like alarms when it looks like Zambrano is
4 taking over for Nunez in late, in the fall of 2009 and there
5 are exchanges about that.

6 And there's email traffic where Mr. Fajardo then comes
7 to say that he thinks things are under control and he explains
8 to Mr. Donziger in email traffic that is in the book that we've
9 handed up that will Nunez have more influence over Zambrano or
10 will Liliana -- that turned out to be Zambrano's mistress --
11 and Guerra have more influence.

12 And of course, your Honor, we know what happens later
13 in the fall. They've cut their deal with Guerra. They know
14 he's steering the case in their direction at Zambrano's
15 insistence. So they eventually reach a point with Zambrano
16 where they're extremely comfortable with Zambrano. And by
17 December of 2009, again, an email that is in the book,
18 Mr. Fajardo is assuring his team that the plan for the
19 judgment, this is in the middle of Zambrano's first tenure, the
20 plan for the judgment is assured 99.99 percent.

21 Now, your Honor, I want to come briefly to a couple of
22 the things that were said by the defendant's counsel,
23 Mr. Friedman and Ms. Littlepage, about causation and the
24 Cabrera report. And I want to, if I may, just spend a minute
25 explaining how Cabrera never came out of this case, never came

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1 out of this judgment no matter what language they ghostwrote in
2 the judgment for Zambrano.

3 Your Honor, the judgment and clarification order
4 purport to say that Cabrera is not going to be taken into
5 account, but the reality is in four fundamental respects, this
6 judgment relied on Cabrera, always did.

7 Your Honor will recall the pit count. This is
8 critically important because the number of pits is then
9 multiplied by a multiplier and that's how they come up with the
10 \$5.4 billion for remediation.

11 And going a little too fast on the charts, but I will
12 try to speak faster.

13 THE COURT: I don't know that that's going to help
14 understanding, Mr. Mastro.

15 MR. MASTRO: So the judgment refers to 880 pits. And
16 the judgment, the author of the judgment claims that that's
17 proven through aerial photographs and there's even a
18 clarification there.

19 THE COURT: Well, it said more than that.

20 MR. MASTRO: It does say more than that, your Honor,
21 but the clarification order then specifically says that the 880
22 pits, the source of that is "the court analyzed the various
23 aerial photographs that form a part of the record and that were
24 certified by the military geographic institute." So challenged
25 on this point, the clarification order makes crystal clear that

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1 it's the photos of the pits that supposedly are the basis on
2 which Judge Zambrano came to the conclusion that there were 880
3 pits.

4 Now, we had expect testimony from both Mr. Lynch, who
5 factored out those pits that should be removed because they're
6 attributed to Petroecuador or as to which there were findings
7 of no impact, the actual number after you do that in the
8 Cabrera report is 880 pits, exactly the same number that shows
9 up in the judgment.

10 And then we had an expert on aerial photography and
11 how to review aerial photographs who said it's impossible that
12 the Cabrera report could independently review, the author of
13 the Cabrera report could independently review and then that the
14 Ecuadorian judgment could come to exactly the same pit count.
15 It's practically impossible for Judge Zambrano, with no
16 training in reviewing aerial photographs, to have accurately
17 interpreted those photographs. And we saw a demonstration in
18 this courtroom.

19 And the same thing was done with cleansing expert
20 Allen of pits that weren't pits because we looked at the aerial
21 photograph, they turned out to be trees. And, of course, this
22 is critically important, your Honor, because the 880 pits times
23 6 million per pit is how they came up with 5.4 billion in
24 remediation, 6 million per pit coming from Doug Allen.

25 THE COURT: Now, Allen is one of the so-called

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1 cleansing experts?

2 MR. MASTRO: Correct, your Honor. We're going to come
3 back to him in a minute.

4 Potable water damages. The judgment relies on Cabrera
5 for its potable water damages. Cabrera said 430 million to
6 replace the entire potable water system. The judgment purports
7 to rely on Barros, but all Barros says here, Cabrera says
8 430 million, it's enormously exaggerated because you don't have
9 to replace the whole water system, so there should be some
10 factoring off the 430 million that's Cabrera's estimate.

11 What does the judgment do? It uses the same
12 430 million, Cabrera is the source, and it does a factoring off
13 the 430 million. The 430 million is Cabrera and any factoring
14 that's done is off of Cabrera.

15 Now, your Honor, it's also the case that through the
16 cleansing experts, we know that the judgment relies on Cabrera
17 because after all, your Honor, it's undisputed, the Weinberg
18 group confirms this, Ted Dunkelberger and the cleansing experts
19 confirm it. They were given Cabrera's report on which to rely,
20 and many of them admitted that they did rely on Cabrera's
21 report. And then they didn't have time to do their own
22 reports. They had less than a month. They didn't do any
23 independent research. They didn't go to Ecuador, they didn't
24 do any testing, they didn't do any independent sampling. They
25 had to rely on what was given to them. In fact, in some cases,

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1 like deja vu all over again, Stratus-wise, their reports were
2 even ghostwritten in whole or in part by a coordinating expert
3 from the Weinberg group.

4 But let's talk about two examples where the cleansing
5 experts relying on Cabrera pass through to the judgment.
6 Dr. Barnhouse, one of the cleansing experts, he testified he
7 reviewed Cabrera's report but did not prepare a damages report
8 himself. The judgment then purports to be based on
9 Dr. Barnhouse, but he himself did not do any damage report. It
10 goes back to Cabrera for this particular damage, to say there
11 are damages for loss of habitat and services. It's Cabrera
12 that concluded there should be damages for that category and
13 Cabrera alone.

14 And, your Honor, back to Doug Allen. Doug Allen,
15 whose per pit count is part of how you figure out how to do the
16 5.4 in remediation damages, he admits he relied on parts of the
17 Cabrera report and the judgment says that specifically it cites
18 Allen in this regard.

19 Now, your Honor, finally, the structure, the damage
20 categories by structure come right out of Cabrera and they're
21 mirrored in the judgment itself. While the numbers may not be
22 identical in each category, in fact they differ, it's
23 remarkable how consistent the damage categories are and how at
24 the end of the day there's such similarity in the numbers.
25 And, your Honor, we have listed them all for you comparing the

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1 pages of the judgment with the pages of the Cabrera report.

2 Cabrera tainted this judgment throughout, through the
3 cleansing experts, through the ghostwriting. It's a tainted
4 judgment.

5 Now, your Honor, finally, I have to say a word about
6 collateral estoppel because it's the elephant in the room.
7 They can talk about comity. They can talk about you should
8 give judicial notice. If it walks like a duck and it talks
9 like a duck and it squawks like a duck, it's a duck. They want
10 you to give effect to appellate decisions in Ecuador on factual
11 findings in this case. It's called collateral estoppel. They
12 may have raised it as an affirmative defense. They don't have
13 a recognizable or enforceable judgment and they've now put it
14 at issue, no matter what words they use, comity, judicial
15 notice, whatever, they're synonyms for collateral estoppel.

16 Your Honor has every right to now reach the
17 determination that it's their affirmative defense of collateral
18 estoppel is no good and should be rejected because the judgment
19 and the appellate decisions that flow from it come out of a
20 corrupt Ecuadorian system and it's a judgment procured by
21 fraud.

22 Now, your Honor, the fact of the matter is that the
23 Ecuadorian courts, both at the trial level and the appellate
24 level, recognized that the fraud allegations, the RICO case, is
25 where fraud issues would be determined. They actually refuse

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1 to reach those questions. Their latest cassation appeal says
2 procedural fraud they're not even going to consider. And, of
3 course, going back to Zambrano at the appellate level, they
4 said that was to be determined here.

5 If your Honor determines this was a judgment procured
6 by fraud in a fundamentally corrupt system that denies
7 litigants, not just Chevron, but litigants in cases like this
8 where the government has such a profound interest, due process
9 and fairness, that judgment, whether affirmed on appeal or
10 otherwise, should not be given force and effect and their
11 affirmative defense fails.

12 And I have to say, your Honor, it's unrebutted
13 evidence in this record, unrebutted evidence first from
14 academic Sandra Elena who did a comparative analysis of
15 judicial systems and concluded that Ecuador is the worst
16 performer in terms of judicial impartiality among all Latin
17 American countries and that given the huge turnover year after
18 year in the top judges in Ecuador, especially since Correa has
19 been in, the Ecuadorian judicial system is neither independent
20 nor impartial. Your Honor has the right to consider that.

21 And your Honor has the right to consider Dr. Grau,
22 Dr. Alvarez Grau's moving testimony in this courtroom, moving
23 testimony about a country that he loves, a court system and
24 legal practice that he's been involved in for decades, that the
25 administration of justice cannot be carried out impartially

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1 when the facts or controversy submitted for decision are
2 political, social, or economic importance, and his own
3 testimony about the changes that have occurred over the last
4 decade and particularly during the Correa administration,
5 moving, powerful testimony on the ground in Ecuador.

6 And, your Honor, I have to say that what happened with
7 Dr. Alvarez Grau since, with Mr. President Correa directly
8 attacking him as a Chevron witness on national radio, a man so
9 proud of his country, so patriotic, who broke down on the stand
10 here telling about painful experience but still had the courage
11 to testify, it tells you volumes about the state of the
12 judiciary in Ecuador.

13 And, your Honor, it also tells you volumes about the
14 state of the world in Ecuador that on the day this trial began,
15 the national assembly controlled by the same political party as
16 President Correa -- this is in the record, your Honor,
17 PX2558 -- issued a resolution condemning Chevron, national
18 assembly condemning Chevron. President Correa going on
19 national radio condemning Chevron and calling those who testify
20 honestly in court that they are traitors to the state. We know
21 what the state of justice is in Ecuador and it's a sorry,
22 sorry, sad state.

23 Your Honor, in concluding, I have to come back to what
24 Mr. Friedman said at the end of his closing because, your
25 Honor, he expressed a very personal view and I have to say it

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1 saddened me, it saddened me because, your Honor, Steven
2 Donziger has shamed our profession. Other lawyers who were
3 working with him, who were misled by him, felt they had to
4 ethically withdraw instead of continuing to represent him, and
5 this is not someone who has served the interest of his clients
6 well. This is someone who has committed crimes to win a case
7 and to aggrandize himself.

8 And, your Honor, it's why Jeff Shinder when he told
9 Mr. Donziger he had to withdraw for ethical reasons said --
10 this is page 1298, lines 21 to 24 -- I communicated to him that
11 I thought that to the extent there was an underlying case to be
12 made regarding the environmental damage in Ecuador that the
13 conduct that I learned had irretrievably wounded it.

14 And, your Honor, everything that Mr. Donziger touched,
15 every person he touched in this case on his team, how many of
16 them came into this courtroom since to turn on him, from
17 Stratus, that they renounced their work on the Cabrera report,
18 from David Russell, who said that his work for Mr. Donziger was
19 swag, a scientific wild assed guess.

20 THE COURT: This is rebuttal, not repetition.

21 MR. MASTRO: I understand, your Honor -- and
22 Mr. Calmbacher, whose report was forged and submitted to the
23 Court even though he found no environmental contamination.

24 Your Honor, the evidence in this case is overwhelming.
25 It's overwhelming evidence of fraud and extortion and bribery

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1 and blackmail. And maybe Mr. Donziger thought he could get
2 away with it in Ecuador, but he can't get away with it here.

3 Your Honor, we ask you to enter a judgment finding
4 Mr. Donziger and his coconspirators to have violated the RICO
5 statute, impose equitable relief that protects parties from
6 this kind of criminal activity and protect Chevron from
7 Mr. Donziger and his coconspirators profiting from this crime
8 and finds that Mr. Donziger and the Ecuadorian defendants have
9 engaged in fraud.

10 Your Honor, we appreciate everything and all the time
11 you have given to this case in the several weeks of this trial.
12 We're here for one thing and one thing alone -- justice.

13 Thank you, your Honor.

14 THE COURT: Thank you. Okay.

15 Where do we stand on the question of the exhibits and
16 the deposition designations?

17 MR. FRIEDMAN: Your Honor, we would move into evidence
18 all of our exhibits. We've given the Court, to the clerk our
19 three hard drives with all of those exhibits on them. Why are
20 you looking at me like that?

21 THE COURT: Well, I don't even know what they are.

22 MR. FRIEDMAN: They're all the exhibits on our exhibit
23 list. I don't think you want me to read them all.

24 THE COURT: Perhaps not, but.

25 MR. FRIEDMAN: I don't know what the -- I'm just

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1 trying to do what Mr. Mastro did a couple weeks ago. We have
2 an exhibit list with all our exhibits on it. We've withdrawn a
3 bunch. So the clerk has a copy of the ones we're moving in.

4 THE COURT: Can I see that? He's out of the room
5 right now. Andy.

6 THE DEPUTY CLERK: Yes, Judge.

7 THE COURT: Do you have a list of the defendant's
8 exhibits that they're moving in?

9 THE DEPUTY CLERK: No.

10 THE COURT: No.

11 MR. FRIEDMAN: I apologize, your Honor. I thought
12 it's on the hard drive.

13 THE DEPUTY CLERK: The hard drive is being loaded up.
14 It's being scanned right now.

15 THE COURT: I thought I was abundantly clear on day
16 one. There's to be a set of paper exhibits initialed by
17 counsel both counsel, so that there's no controversies about
18 what the record is. And do we have a list?

19 THE DEPUTY CLERK: There's two bodies. There's the
20 ones that were moved in on a daily basis, which we have. And
21 then I was told there are others that are agreed upon with
22 Gibson Dunn, which we have on this hard drive which we don't
23 have a list of.

24 THE COURT: No list.

25 MR. FRIEDMAN: No list. Could I have a minute to talk

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1 to Mr. Seley, your Honor?

2 THE COURT: Sounds like a good idea.

3 MR. MASTRO: Your Honor, we actually have prepared a
4 list of their exhibits with our objections to it. So if I hand
5 that up, you will have a list of their exhibits.

6 MR. FRIEDMAN: And I was told, your Honor, this was on
7 the hard drive, but I haven't personally looked.

8 THE COURT: That may be, but I'm an old-fashioned guy.
9 I use hard drives, but I don't view them as the Court's record.
10 Certainly not here.

11 All right. So I'm handed a document of 212 pages
12 titled plaintiff's objections to defendant's trial exhibits.
13 And we'll mark this, Andy, Court Exhibit C and I'll do that
14 myself.

15 Now, does everybody agree that except to the extent
16 the defendant's exhibits that are listed here have already been
17 received, either unconditionally or otherwise, this list
18 comprehends each and every exhibit the defendants are offering
19 in this case?

20 MR. FRIEDMAN: With one exception, your Honor, which I
21 think is the Ecuadorian Supreme Court opinion that we've agreed
22 can go into evidence and I'm not sure what the number is.

23 THE COURT: Let's deal with that separate. With that
24 exception.

25 MR. FRIEDMAN: With that exception, yes.

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1 THE COURT: Okay. And I guess then there's just no
2 reason why I shouldn't take the copies of the exhibits and I'll
3 just rule on these in due course.

4 MR. FRIEDMAN: Yes.

5 MR. MASTRO: Yes, your Honor. It should be
6 denominated I'm told Exhibit D because there's already an
7 Exhibit C.

8 THE COURT: Exhibit D. We've just magically
9 transformed it into Exhibit D with a fountain pen, not an
10 electronic device.

11 Okay. Now, next item.

12 MR. FRIEDMAN: We marked, we agreed that the Supreme
13 Court of Ecuador opinion could be an exhibit, but I did not
14 catch the number that we agreed on.

15 MR. MASTRO: Not for the truth obviously, your Honor.

16 MR. FRIEDMAN: PX8095.

17 THE COURT: PX8095.

18 MR. FRIEDMAN: Yes.

19 THE COURT: And who's offering it?

20 MR. FRIEDMAN: We would offer it.

21 MR. MASTRO: I don't know why it has a PX, your Honor.
22 It's okay, but we're not offering it. We're just not
23 objecting.

24 THE COURT: If you're not offering it, give it a
25 Defendant's Exhibit number.

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1 MR. MASTRO: Go ahead, Mr. Friedman. Give it a
2 Defendant's Exhibit number.

3 THE COURT: It can be DX8095.

4 MR. FRIEDMAN: Let's call it DX8095.

5 THE COURT: All right. And it's being offered by the
6 defense. And is there any objection?

7 MR. MASTRO: No, your Honor, as long as not for the
8 truth.

9 THE COURT: Well, then it's received not for the
10 truth.

11 (Defendant's Exhibit 8095 received in evidence)

12 THE COURT: Okay. So that's it on the exhibits all
13 around.

14 MR. FRIEDMAN: One last.

15 THE COURT: The second last item.

16 MR. FRIEDMAN: We have a stipulation about the
17 confidentiality of certain exhibits if I could just hand up to
18 the Court.

19 THE COURT: Well, I don't quite understand this. Are
20 these materials that are the subject of this proposed order in
21 evidence for what purpose given that the Court has ruled,
22 either myself or Judge Katz, that they're all protected work
23 product, what's the point?

24 MR. FRIEDMAN: We're offering them to make them part
25 of the record. I expect you're going to rule that they're not

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1 going to be -- not admitted, but we had to show that we offered
2 them.

3 You're talking about the videotapes?

4 (Continued on next page)

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1 THE COURT: I am talking about what you just handed
2 me.

3 MR. FRIEDMAN: Part of it deals with videotapes.
4 There are other parts of those documents that have other
5 exhibits that are not work product.

6 THE COURT: Look, I will figure it out, and I will
7 sign it or not as appropriate. Thank you.

8 So we are done with exhibits on both sides.

9 MR. MASTRO: We have our plaintiff's rebuttal exhibit
10 list. Andy was already given a thumb drive. We have a
11 document.

12 THE COURT: I recognize some familiar items here.
13 Some of these have been received, is that right?

14 MR. MASTRO: Yes, your Honor.

15 THE COURT: To the extent they are not received,
16 you're offering the rest of them?

17 MR. MASTRO: Yes, your Honor.

18 THE COURT: And there are defense objections, right?

19 MR. FRIEDMAN: There are. And I think we filed those
20 electronically.

21 THE COURT: So this will be Court Exhibit E. To the
22 extent it becomes appropriate to do so, I will rule on the
23 objections. To the extent the exhibits have already been
24 received, I don't have to do anything, unless there is a motion
25 to strike pending, and I don't actually know.

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1 This is Court Exhibit E, Andy.

2 Now, we are all done with exhibits, correct?

3 MR. MASTRO: Yes, your Honor. Other than on the
4 subject of Mr. Moncayo's documents, which we still do not have.
5 Mr. Brodsky can address that.

6 MR. BRODSKY: We have reached a Rule 502(d) agreement
7 with Mr. Gomez. And so he is going to be producing today from
8 the hard drive of Mr. Moncayo the responsive documents, which
9 in short order and expeditiously we will review. If we
10 identify anything, we would ask your Honor to allow us to
11 submit from those documents, given the fact that we are
12 reviewing them for the first time now.

13 THE COURT: Any objection to that from the defendants?

14 MR. FRIEDMAN: No.

15 MR. GOMEZ: No.

16 THE COURT: That's obviously not a blank check that
17 anything that is there is admissible. I understand that. So I
18 will certainly accept that.

19 Deposition designations?

20 MR. FRIEDMAN: Those were also submitted on the hard
21 drives to the Court. They are all submitted on the hard
22 drives. I take it you would like a paper pleading that
23 indicates each one of them.

24 THE COURT: You bet.

25 MR. FRIEDMAN: I can't say for sure that's been filed.

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1 I know it was supposed to have been filed, but I can't say for
2 sure it was. If I could have 48 hours to do that?

3 THE COURT: Absolutely.

4 And that should be a joint list. I want to know
5 definitively on a piece of paper. And you don't want 48 hours.
6 You want more than 48 hours, right, because the turkey is not
7 going to help you on this.

8 MR. FRIEDMAN: I am not in a good position to bargain
9 right now.

10 THE COURT: I am trying to accommodate you.

11 MR. FRIEDMAN: I appreciate it.

12 All right. The record is now at this moment, subject
13 to getting that list, closed. If there is an application with
14 respect to the Moncayo documents, there will be an application
15 with respect to that. And it's not to go beyond next week.
16 But Friday of next week that ship has sailed irrevocably
17 whether anybody is on it or not.

18 Everybody understand that?

19 MR. MASTRO: Understood, your Honor.

20 THE COURT: Now, next item.

21 You are all going to contemplate before your post
22 Thanksgiving naps the briefing from here on, and there are a
23 number of items that I have made notes of that I would simply
24 suggest to you both you take into account in that briefing. I
25 am dealing with a lot of skilled lawyers so I know you will

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1 take account of almost everything, and probably more than
2 everything, but these should not go awry.

3 There should be addressed the question of whether, if
4 the plaintiff prevails, the plaintiff is seeking equitable
5 relief on state law claims, independent of the RICO claims, and
6 what the basis of that is and what the scope and nature of it
7 is. And it's a subject that to some degree was addressed in my
8 opinion some time ago denying an application for a Section
9 1292(b) certificate, and then you all had lots of fun with it
10 in the Court of Appeals, but that should not be omitted.

11 A second question that is obviously not lost on you,
12 any of you, is the implications of *Morrison* for the RICO
13 claims. I may be doing an injustice to both of you, but I
14 understand it to be more or less the plaintiff's position that
15 this was activity largely directed by an American from the
16 United States, aimed at an American, and it may be an
17 oversimplification, but that's pretty much the end of the
18 discussion from the plaintiff's point of view. And the view on
19 the other side is at least a significant part of the conduct
20 took place beyond the boundaries of the United States, and that
21 from their point of view, again, at the risk of
22 oversimplification, is the end of it.

23 I suggest you look at this question, both of you, from
24 a much more nuanced point of view. Quite possibly as an
25 alternative to each of your respective positions, but it may

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1 not be as simple as either one of you think it. So I just want
2 you to know that I am thinking about it, and I want to give you
3 a fair opportunity, both of you, to think about it and help me
4 think about it.

5 Thirdly, the closing arguments made clear everybody's
6 awareness that there were quite a few apologies to Arthur Conan
7 Doyle, the dogs that did not bark in this case. A humorous
8 reference to the absence of a whole cast of characters. Again,
9 not a derogatory comment, just an effort at being a little bit
10 light. There are a whole bunch of people who presumably had
11 quite a lot to say had they been here, including, but not
12 limited to, Ann Maest, Douglas Beltman, Luis Yanza,
13 Mr. Prieto -- forgive me, I forget his first name -- Juan Pablo
14 Saenz, Pablo Fajardo. And I think both sides have questions to
15 address on what, if anything, I am to make of the missing
16 nature of those, and possibly other witnesses. What, if any,
17 inferences can or should be drawn and the like.

18 In the event the plaintiff were to prevail, what is
19 the appropriate scope of any equitable relief, if any is
20 appropriate at all, in terms of geography? Does it stop at the
21 Atlantic and the Pacific, the Canadian and Mexican borders, or
22 does it go beyond? I know that's a subject near and dear to
23 everybody's heart.

24 I suggest also that consideration be given to the
25 question of whether, if equitable relief is appropriate and if

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1 it were limited to the United States, it should incorporate or
2 could incorporate or might incorporate or apply to efforts, if
3 any, by the judgment creditors to enforce here any foreign
4 judgment that has granted enforcement to the Ecuadorian
5 judgment. This is a subject prompted by the Invictus
6 memorandum, which everybody is familiar with, and given that,
7 it's squarely raised by the issues in the case, and I suggest
8 it is an appropriate subject for consideration.

9 Finally, there has been a lot of argument about comity
10 and those sorts of arguments. I suggest that the parties might
11 consider sharing any views they might have with me on the
12 question of whether in fact U.S. courts, including state courts
13 and courts of other nations don't routinely pass, in a variety
14 of other contexts, on the adequacy of legal systems of
15 countries other than their own, and on the question of whether
16 particular judgments of countries other than their own were or
17 were not viewed as fraudulent.

18 Two contexts that are obvious are these. I mentioned
19 the ironies of this case yesterday, and they are remarkable in
20 many ways. Everybody has changed sides on key issues, and
21 sometimes lawyers need to do that in the interest of their
22 clients, lawyers on both sides. It is certainly the case that
23 Chevron is here arguing that the courts of Ecuador are
24 systemically inadequate and that the particular judgment
25 involved was fraudulent, in the face of having argued in this

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1 very court years ago, for purposes of the forum non conveniens
2 motion, that the courts of Ecuador were adequate and that the
3 case should go there.

4 Mr. Donziger as counsel and his clients argued back
5 then, for purposes of forum non conveniens, that the courts of
6 Ecuador were systematically inadequate. Well, both sides in
7 that case asked Judge Rakoff and the Court of Appeals to pass
8 judgment on the adequacy of the Ecuadorian legal system, and
9 American courts do it all the time. Ms. Littlepage, in a
10 moment of good advocacy, and I don't mean to suggest there was
11 only one moment, Ms. Littlepage, this morning cited back to me
12 my decision in *Pavlov*, where I considered the adequacy for
13 another purpose of a foreign judicial system.

14 It does happen all the time in the forum non
15 conveniens circumstance. And, of course, it does happen all
16 the time in this country under the Uniform Foreign-Country
17 Money Judgments Act and the common law of every state of the
18 union when a foreign judgment is brought here and enforcement
19 or recognition is sought. I understand that's not exactly what
20 the complaint seeks here. It may or may not be what the
21 defense is seeking when they rely now on the Ecuadorian
22 appellate decisions. That's for another day. But I suggest
23 you all think about and address these issues.

24 And that's the end of my list. Obviously, much more
25 will occur to you, but these are things that I want you to be

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1 sure to cover, because they are all important, and it's in
2 everybody's interest to have as informed a judge as you can
3 have.

4 OK. On a final note from me, I think it was Mr.
5 Friedman who commented this morning that one of the things that
6 amazed him about this case was how amazingly contentious it
7 was. I have something to say only now from the moment the
8 trial started to today. I have nothing but respect for the
9 professionalism of all of the lawyers who presented this case
10 on both sides. Everybody acted zealously on behalf of their
11 clients, did their best. They were, as far as I can see,
12 entirely professional, and I am very appreciative of that,
13 particularly given the past history in this case, on which I
14 have commented enough already.

15 So I think we are done. I hope everybody gets their
16 planes, if that's where you're going, and Happy Thanksgiving.

17 (Adjourned)
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DEFENDANT EXHIBITS

Exhibit No.

Received

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